

its behalf by the United States, and in addition, to avoid any adverse impact Zuni might suffer by virtue of the United States' representation herein of multiple interests, including those of the Navajo Nation, the Ramah Navajo Band, individual Indians holding trust lands, and various federal agencies claiming water rights for the Cibola National Forest, the El Morro National Monument, the El Malpais National Monument, the El Malpais National Conservation Area, and other federally-owned lands within the Zuni River basin in New Mexico. Zuni believes that under the circumstances, its interests may not be adequately represented by the United States, and only by intervening as a party in its own right can its interests be fairly and fully protected in this proceeding. Zuni should thus be permitted intervention as a matter of right under FED. R. CIV. P. 24(a).

3. Wholly apart from the adequacy of the United States' representation of Zuni's interests, Zuni's claims herein raise factual and legal issues that are common to the issues raised by the claims of the other parties, namely, the nature and extent of the water rights of each of the parties in the Zuni River basin adjudication. Under the circumstances, Zuni plainly satisfies the requirements for permissive intervention under the provisions of FED. R. CIV. P. 24(b).

4. This Motion is timely because the adjudication has just been filed by the United States, and preliminary matters, including scheduling, have not yet even been resolved. Zuni's intervention will not delay these proceedings or otherwise prejudice any party.

5. Counsel for Zuni attempted to contact all other counsel and pro se parties of record in this case. Counsel for Zuni is authorized to state that although most parties have no opposition to the granting of this Motion, Counsel for the New Mexico State Engineer and pro se party Gugliotta take no position on the motion, and Counsel for Alberta O'Neal and parties Albert and David Lebeck oppose Zuni's Motion to Intervene. Counsel for Zuni was unable to contact pro se parties Ted Brodrick, Ann Hambleton Beardsley, and Louis E. DePauli, Sr., and did not receive a response from Counsel for Tri-State Generation

and Transmission Association, Inc., Counsel for Pitchford Properties, Counsel for parties Beal, Goldsmith, and Scott, Counsel for Salt River Project, Counsel for Bernett, and pro se party McBride.

6. Zuni's proposed Complaint in Intervention is submitted herewith, and Zuni requests that should the Court grant this Motion to Intervene, the Complaint submitted herewith be filed by the Clerk of the Court as Zuni's Complaint in Intervention.

Respectfully submitted,

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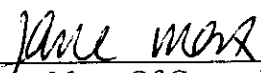
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Jane Marx, Of Counsel

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

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 STATE OF NEW MEXICO, *ex rel.*, STATE)
 ENGINEER, A & R Productions, *et al.*,)
)
 Defendants.)
)
)
 _____)

01-CV-00072-BDB/ACE
 ZUNI RIVER BASIN

COMPLAINT IN INTERVENTION OF THE ZUNI INDIAN TRIBE

The Zuni Indian Tribe, by and through its counsel, Williams, Janov & Cooney, P.C., for its Complaint in Intervention alleges as follows:

1. The Zuni Indian Tribe (“Zuni” or “Tribe”) is a federally-recognized Indian tribe, whose New Mexico lands are primarily situated in Cibola and McKinley Counties, New Mexico.
2. The Zuni River and its tributaries lie within Cibola and McKinley Counties, New Mexico. All rights to use the surface and underground waters within the areas drained by the Zuni River and its tributaries are to be adjudicated herein.
3. From time immemorial and for many centuries prior to Spanish exploration and occupation of the Zuni River basin, Zuni has lived on, cultivated, and occupied lands encompassing its present location in the Zuni River basin in New Mexico. In 1689, the Zuni Indian Tribe received a grant of land from the Spanish Crown from within the broad territory that the Tribe used and occupied since time immemorial. The United States acquired jurisdiction over these lands by the Treaty of Guadalupe Hidalgo of 1848 (9 Stat. 922). Zuni’s occupancy and ownership of lands and use of water associated with these

lands has been at all times recognized by the governments of Spain, the Republic of Mexico, and the United States of America.

4. By an Executive Order of March 16, 1877, the United States set aside additional lands for the benefit of the Tribe and established a reservation for the Zuni Indian Tribe. The Executive Order encompassed the original land grant area and additional lands. The Zuni Indian Reservation has been enlarged through numerous other executive orders and acts of Congress: the Executive Order of May 1, 1883 (1 Kappler 800); Executive Order of February 17, 1912 (III Kappler 670); Executive Order of 1917 (40 Stat. 1723); purchases pursuant to the Indian Reorganization Act of 1934 (48 Stat. 984); Act of June 20, 1935 (49 Stat. 393); Act of August 13, 1949 (63 Stat. 604-05); and the Act of March 16, 1962 (76 Stat. 33).

5. Throughout this entire period, dating from time immemorial, Zuni has engaged in irrigated agriculture on those lands, using waters from the Zuni River basin and, further, has taken and used water for religious, municipal, domestic, livestock watering, industrial, recreational, and other homeland needs.

6. Zuni claims the right to the use of the surface and underground waters within the Zuni River basin in amounts sufficient to foster, promote, and fulfill the current and future needs of the Tribe and fulfill the purposes for which the lands were set aside for the Tribe, which right dates from time immemorial or, at the latest, the date of creation of the reservation, and is prior and paramount to any other rights, claims, or uses by any other parties to this proceeding or other claimants to these waters.

7. Each of the other parties and interests herein claims rights in or to the use of the waters of the Zuni River basin, which claims are adverse to the claims of Zuni.

WHEREFORE, Plaintiff-Intervenor, Zuni Indian Tribe, prays for relief as follows:

1. That this Court require that each and every party, and all other claimants to the use of the surface and underground waters of the Zuni River basin, appear and set forth fully their claims to the use of the waters of the Zuni River basin.

2. That this Court determine the rights of each of the parties in and to the use of the surface and underground waters of the Zuni River basin, setting forth such rights with a date of priority for each right.

3. That this Court determine and decree that the Zuni Indian Tribe has the right to divert and use as much of the surface and underground waters of the Zuni River basin as is or may become necessary for any of the present or future needs and purposes of Zuni, and that such right be quantified and declared to have an immemorial priority date or, at the latest, the date of creation of the reservation, prior and paramount to any rights found on behalf of any other party or claimant in this adjudication.

4. That this Court enter its order enjoining all diversions and uses of the surface and underground waters from the Zuni River basin except in accordance with the rights and priorities as set forth in the Court's decree.

5. That the Court enter such further orders and decrees and grant such further and different relief as may be just and proper for a determination of the parties' rights to the use of the surface and underground waters of the Zuni River basin, or with respect to such other matters that the Court deems proper.

Respectfully submitted,

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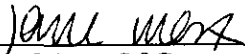
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