

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

FILED
U.S. DISTRICT COURT
DISTRICT OF NEW MEXICO

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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

**ZUNI INDIAN TRIBE'S
MEMORANDUM IN SUPPORT OF MOTION TO INTERVENE**

The Zuni Indian Tribe ("Zuni" or "Tribe"), by and through its counsel, Williams, Janov & Cooney, P.C., states the following in support of its Motion to Intervene:

1. Zuni May Intervene As A Matter Of Right.

FED. R. CIV. P. 24(a) recognizes a party's right to intervene as a matter of right where the party has an interest in the property or transaction which is the subject matter of the action and its interests are not adequately represented. The Zuni Indian Tribe has a proprietary interest in its water rights in the Zuni River basin, where the Tribe's homeland is primarily located and where it has resided from time immemorial. The Tribe must protect its rights from diminishment in this adjudication. Zuni clearly satisfies the requirement of FED. R. CIV. P. 24(a) that it have a direct interest in the subject matter of action.

Zuni also satisfies the requirement that its interests are not adequately represented. Zuni is currently represented in this action by the United States. Although the United States has asserted claims on behalf of the Tribe, it also represents other Indian tribes and various federal agencies claiming water rights in the Zuni River basin. It long has been recognized that, particularly where the United States

represents various interests in an adjudication and claims rights on its own behalf and that of various entities, a conflict of interest exists such that Indian tribes may intervene as a matter of right in order to protect their property rights. *State of New Mexico v. Aamodt*, 537 F.2d 1102, 1106-07 (10th Cir. 1976), *cert. denied*, 429 U.S. 1121 (1977). *See generally Arizona v. California*, 460 U.S. 605, 614-15 (1983) (Intervention, whether permissive or otherwise, is proper, because Indian tribes' water rights are "vital," and tribes' direct participation in litigation "critical to their welfare should not be discouraged."). Here, the United States cannot adequately represent the interests of the Tribe and pursue claims on its own behalf and that of other federal tribes and agencies. Zuni is entitled to intervene in this action as a matter of right.

2. Alternatively, Zuni Meets The Requirements For Permissive Intervention.

FED. R. CIV. P. 24(b) allows a party to intervene by permission of the Court if its claim and the main action have questions of law or fact in common. This adjudication covers the use and ownership of water rights in the Zuni River basin. Clearly, since Zuni claims a right to the surface and underground waters of the Zuni River basin, Zuni's water rights claims raise the same issues as those already before the Court in this case.

FED. R. CIV. P. 24(b) allows permissive intervention where no prejudice to the parties or delay will result. No prejudice or delay will occur in this instance. This case is in its infancy. The parties have not yet even developed a scheduling order, no evidence has been taken, and no reports have been filed with the Court. Because this case is in such an early stage, intervention by Zuni will neither delay its resolution nor cause prejudice to any party.

The Zuni Indian Tribe, therefore, respectfully requests that this Court grant its Motion to Intervene as a Plaintiff in the above-captioned cause.

Respectfully submitted,

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-Certificate of Service-

I hereby certify that on the 20th day of April, 2001, a true and correct copy of the foregoing was served by United States Postal Service first class, postage pre-paid mail to the following:

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