

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

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

01 MAY 10 PM 1:14

UNITED STATES,

Plaintiff,

vs.

STATE OF NEW MEXICO ENGINEER;
SOLIS, JOSEPH A. & BARBARA L.; et al.,

Defendants.

ANSWER TO UNITED STATES' COMPLAINT

COMES NOW Defendant Joseph A. Solis and Barbara L. Solis, by and through their attorneys, Beall & Biehler, P.A., by Larry D. Beall and hereby responds to the United States' Complaint ("Complaint") states that:

I. Nature of the Action

1. Defendant admits that paragraph 1 of the Plaintiff's Complaint is a statement of the nature of this action.

II. Jurisdiction and Venue

2. Defendant incorporates by reference the admissions and denials set forth in Paragraph 1 of the Plaintiff's Complaint as if fully set forth herein.

3. Defendant admits the allegations of Paragraph 2 of the Plaintiff's Complaint.

Rose M. Marsh
CLERK-AT-LARGE

CIV 01 - 0072 BB/WWO

III. Description of the Issue

4. Defendant incorporates by reference the admissions and denials set forth in Paragraphs 1 through 2 of the Plaintiff's Complaint as if fully set forth herein.

5. Defendant has insufficient information, knowledge and/or belief as to the truth of the allegations contained in Paragraph 3 of the of the Plaintiff's Complaint and, therefore, denies the same.

IV. Parties

6. Defendant incorporates by reference the admissions and denials set forth in Paragraphs 1 through 4 of the Plaintiff's Complaint as if fully set forth herein.

7. Defendant has insufficient information, knowledge and/or belief as to the truth of the allegations contained in Paragraph 4 of the Plaintiff's Complaint and, therefore, denies the same.

8. Defendant admits that this Defendant is a person or entity claiming right or intent in the use of surface and groundwaters of the Zuni River basin in New Mexico, including the right to divert, impound, pump and use water in the Zuni River basin. Defendant denies the remaining allegations contained in Paragraph 5 of the Plaintiff's Complaint as they relate to this Defendant. Defendant is without sufficient information, knowledge and/or belief as to the truth of the allegations contained in Paragraph 5 of the Plaintiff's Complaint as they relate to co-defendants and, therefore, denies the same.

9. Defendant has insufficient information, knowledge and/or belief as to the truth of the allegations contained in Paragraph 6 of the Plaintiff's Complaint and, therefore, denies the same.

V. Facts

10. Defendant incorporates by reference its admissions and denials to Paragraphs 1 through 6 of the Plaintiff's Complaint as if set forth fully herein.

11. Defendant has insufficient information, knowledge and/or belief as to the truth of the allegations contained in Paragraph 7 of the Plaintiff's Complaint and, therefore, denies the same.

12. Defendant has insufficient information, knowledge and/or belief as to the truth of the allegations contained in Paragraph 8 of the Plaintiff's Complaint and, therefore, denies the same.

13. Defendant has insufficient information, knowledge and/or belief as to the truth of the allegations contained in Paragraph 9 of the Plaintiff's Complaint and, therefore, denies the same.

14. Defendant has insufficient information, knowledge and/or belief as to the truth of the allegations contained in Paragraph 10 of the Plaintiff's Complaint and, therefore, denies the same.

15. Defendant has insufficient information, knowledge and/or belief as to the truth of the allegations contained in Paragraph 11 of the Plaintiff's Complaint and, therefore, denies the same.

16. Defendant has insufficient information, knowledge and/or belief as to the truth of the allegations contained in Paragraph 12 of the Plaintiff's Complaint and, therefore, denies the same.

17. Defendant has insufficient information, knowledge and/or belief as to the truth of the allegations contained in Paragraph 13 of the Plaintiff's Complaint and, therefore, denies the same.

18. Defendant has insufficient information, knowledge and/or belief as to the truth of the allegations contained in Paragraph 14 of the Plaintiff's Complaint and, therefore, denies the same.

19. Defendant has insufficient information, knowledge and/or belief as to the truth of the allegations contained in Paragraph 15 of the Plaintiff's Complaint and, therefore, denies the same.

20. Defendant has insufficient information, knowledge and/or belief as to the truth of the allegations contained in Paragraph 16 of the Plaintiff's Complaint and, therefore, denies the same.

21. Defendant admits that the Navajo Nation is a federally recognized tribe. Defendant has insufficient information, knowledge and/or belief as to the truth of the remainder of the allegations contained in Paragraph 17 of the Plaintiff's Complaint and, therefore, denies the same.

22. Defendant has insufficient information, knowledge and/or belief as to the truth of the allegations contained in Paragraph 18 of the Plaintiff's Complaint and, therefore, denies the same.

23. Defendant has insufficient information, knowledge and/or belief as to the truth of the allegations contained in Paragraph 19 of the Plaintiff's Complaint and, therefore, denies the same.

24. Defendant has insufficient information, knowledge and/or belief as to the truth of the allegations contained in Paragraph 20 of the Plaintiff's Complaint and, therefore, denies the same.

25. Defendant denies the allegations contained in paragraph 21 of the Plaintiff's Complaint.

26. Defendant has insufficient information, knowledge and/or belief as to the truth of the allegations contained in Paragraph 22 of the Plaintiff's Complaint and, therefore, denies the same.

27. Defendant has insufficient information, knowledge and/or belief as to the truth of the allegations contained in Paragraph 23 of the Plaintiff's Complaint and, therefore, denies the same.

28. Defendant has insufficient information, knowledge and/or belief as to the truth of the allegations contained in Paragraph 24 of the Plaintiff's Complaint and, therefore, denies the same.

29. Defendant admits that the United States may claim a federal reserved water right for a national forest but only to the narrow extent necessary to preserve timber or secure favorable waters flows in national forests. Defendant has insufficient information, knowledge and/or belief as to the truth of the remaining

allegations contained in Paragraph 25 of the Plaintiff's Complaint and, therefore, denies the same.

30. Defendant admits that El Morro National Monument is within the Zuni River basin in New Mexico. Defendant has insufficient information, knowledge and/or belief as to the truth of the remaining allegations contained in Paragraph 26 of the Plaintiff's Complaint and, therefore, denies the same.

31. Defendant admits that a portion of the El Malpais National Monument is within the Zuni River basin in New Mexico. Defendant has insufficient information, knowledge and/or belief as to the truth of the remaining allegations contained in Paragraph 27 of the Plaintiff's Complaint and, therefore, denies the same.

32. Defendant admits that a portion of the El Malpais National Conservation Area is located within the Zuni River basin in New Mexico. Defendant has insufficient information, knowledge and/or belief as to the truth of the remaining allegations contained in Paragraph 28 of the Plaintiff's Complaint and, therefore, denies the same.

33. Defendant admits that tracts of federally owned public lands administered by the Bureau of Land Management are located within the Zuni River basin in New Mexico. Defendant has insufficient information, knowledge and/or belief as to the truth of the remaining allegations contained in Paragraph 29 of the Plaintiff's Complaint and, therefore, denies the same.

34. Defendant admits that ponds, tanks, wells and other water-control structures and devices have been constructed or installed on certain tracts of the federally owned public land administered by the Bureau of Land Management. Defendant has insufficient information, knowledge and/or belief as to the truth of the remaining allegations contained in Paragraph 30 of the Plaintiff's Complaint and, therefore, denies the same.

VI. Claim I

35. Defendant incorporates by reference the admissions and denials contained in Paragraphs 1 through 30 of the Plaintiff's Complaint as if fully set forth herein.

36. Defendant admits the allegations contained in Paragraph 31 of the Plaintiff's Complaint.

37. Defendant denies the allegations contained in Paragraph 32 of the Plaintiff's Complaint.

38. Defendant denies the allegations contained in Paragraph 33 of the Plaintiff's Complaint, except that Defendant does claim a right to divert, impound, pump or use the surface water and groundwaters of the Zuni River basin in New Mexico.

39. Defendant denies the allegations contained in Paragraph 34 of the Plaintiff's Complaint.

40. Defendant denies that the Plaintiff is entitled to the relief sought in its prayer of the Complaint.

41. Except as specifically admitted herein, all other allegations of the Plaintiff's Complaint are denied.

First Affirmative Defense

As a separate and alternative affirmative defense, this Defendant states that the doctrine of federal reserved water rights as set out in *Winters v. United States* does not apply to lands given to the tribes by Spain and Mexico.

Second Affirmative Defense

As a separate and alternative affirmative defense, this Defendant states that Defendant's claim to use surface water and ground waters are not adverse to Plaintiff's rights to use the surface water and ground waters of the Zuni River basin in New Mexico.

Third Affirmative Defense

As a separate and alternative affirmative defense, this Defendant states that non-Indians have occupied the land that is now in ownership of Defendant. Plaintiff has accepted the right of Defendant's predecessors in interest to live on the land and to use the surface and ground waters of the Zuni River basin in New Mexico.

Fourth Affirmative Defense

As a separate and alternative affirmative defense, this Defendant states that Defendant's use of surface and ground waters does not impair Plaintiff's right, on its own behalf, to use the surface water and ground waters of the Zuni River basin in New Mexico to satisfy its needs.

Fifth Affirmative Defense

As a separate and alternative affirmative defense, this Defendant states that Defendant's use of surface and ground waters does not impair Plaintiff's right, on behalf of the Zuni Indian Tribe, the Navajo Nation, the Ramah Navajo Band, and various individual Indians, to use the surface water and ground waters of the Zuni River basin in New Mexico to satisfy its needs.

Sixth Affirmative Defense

As a separate and alternative affirmative defense, this Defendant states that Plaintiff's federally reserved water rights for Cibola National Forest are limited to the narrow extent necessary to fulfill the purpose of the national forests.

WHEREFORE, Defendant Joseph and Barbara Solis request that the Plaintiff's Complaint be dismissed, that they be awarded their costs and attorneys fees, and for such other and further relief as the Court deems just and proper.

BEALL & BIEHLER, P.A.

By: 

LARRY D. BEALL
Attorney for Defendant
6715 Academy Road, NE
Albuquerque, NM 87109
(505) 828-3600
(505) 828-3900 – Fax

I HEREBY CERTIFY that a true
and correct copy of the foregoing
was mailed to:

Charles E. O'Connell, Jr.
Counsel for Plaintiff
U.S. Department of Justice
601 Pennsylvania Avenue NW
Washington, DC 20004

Bruce Boynton
Attorneys for Pitchford Properties
Boynton & Sims-West
Post Office Box 1239
Grants, New Mexico 87020

Kenneth J. Cassutt
Attorneys for Timberlake Ranch
Cassutt, Haynes & Friedman, P.A.
530 B Harkle Road
Santa Fe, New Mexico 87505

Jeffrey A. Dahl
Attorneys for Alan and Christine Davis
Lamb, Metzgar, Lines and Dahl, P.A.
Post Office Box 987
Albuquerque, New Mexico 87103-0987

David R. Gardner
Attorney for Alberta O'Neal
Post Office Box 62
Bernalillo, NM 87004-0062

Raymond Hamilton
US Attorney's Office
Post Office Box 607
Albuquerque, New Mexico 87103-0607

Robert W. Ionta
Pro Se
Post Office Box 1059
Gallup, NM 87305

Albert O. Lebeck, Jr.
Pro Se
Post Office Box 38
Gallup, NM 87305

Patricia A. Madrid
Attorney General
Post Office Box 1508
Santa Fe, New Mexico 87504-1508

R. Bruce Federick
Attorney for Ray Powell, Commission of Public Lands
NM State Land Office
Post Office Box 1148
Santa Fe, New Mexico 87504-1148

Steven L. Bunch
Attorneys for State of New Mexico
2051 W. Zia Road #11-101
Santa Fe, NM 87504-1508

Ernest Carroll
Attorneys for John Yates
Losee, Carson, Haas & Carroll, P.A.
Post Office Box 1720
Artesia, NM 88211-1720

D.L. Sanders
Attorneys for New Mexico State Engineer
Office of the New Mexico State Engineer
Post Office Box 25102
Santa Fe, New Mexico 87504-5102

Sunny J. Nixon
Attorney for Tri-State Generation
Rodey, Dickason, Sloan, Akin & Robb, P.A.
Post Office Box 1357
Santa Fe, New Mexico 87504-1837

Dorothy Sanchez
Attorneys for Jerry Frazier & Emily Frazier
715 Tijeras NW
Albuquerque, NM 87102

Randolph Barnhouse
Attorneys for Delbert Beal, May Beal, William Goldsmith, W.A. Scott &
Janet Fay Scott
Rosebrough & Barnhouse, P.C.
Post Office Box 1744
Gallup, NM 87035-1744

Mark A. Smith
Attorneys for Salt River Project
Rodey, Dickason, Sloan, Akin & Robb, P.A.
Post Office Box 1888
Albuquerque, New Mexico 87103

Mark H. Shaw
Attorney for Paul Bennett
3733 Eubank NE
Albuquerque, NM 87111

this 9th day of May 2001.



LARRY D. BEALL