

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) No. 01cv00072 BB-ACE
)
ZUNI INDIAN TRIBE, NAVAJO NATION,) ZUNI RIVER BASIN
) ADJUDICATION
Plaintiffs in Intervention,)
) Subfile No. ZRB-4-0055
)
v.)
)
A&R PRODUCTIONS, et al.)
)
Defendants.)
_____)

**MOTION TO CORRECT DEFENDANT’S NAME, APPROVE WAIVER OF SERVICE,
AND DISMISS ERRONEOUSLY NAMED DEFENDANT**

COME NOW the Plaintiffs United States of America (“United States”) and State of New Mexico ex rel. State Engineer (“State”) and move the Court to issue its order correcting the name of the defendant specified below to read as follows:

FROM:	TO:
KATHLEEN M. BOLLER REVOCABLE LIVING TRUST	DANIEL W. BOLLER & KATHLEEN M. BOLLER REVOCABLE LIVING TRUST

The Plaintiffs further move the Court to (1) approve the *Waiver of Service of Summons* bearing the printed name “Kathleen M. Boller Revocable Living Trust” but signed by Kathleen M. Boller in her capacity as Trustee for the “Daniel Winslip Boller and Kathleen Marlow Boller Revocable Living Trust U/A 1995” as an effective waiver of service of summons on behalf of the Daniel W.

Boller & Kathleen M. Boller Revocable Living Trust, and (2) dismiss DANIEL W. BOLLER, in his individual capacity, as a party defendant from this case. In support of this motion, the Plaintiffs assert:

1. Based on information contained in county property records, the United States' October 26, 2006 *Motion to Joint Additional Parties Defendant* (Doc. No. 855) requested joinder of two defendants associated with Subfile ZRB-4-0055: the Kathleen M. Boller Revocable Living Trust, and Daniel W. Boller. The Court granted the United States' motion by an order docketed November 1, 2006 (Doc. No. 857).

2. 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 mailed the named defendants a proposed consent order for Subfile ZRB-4-0055 and other required service items.

3. By correspondence dated November 29, 2006 (copy attached as Exhibit 1), Daniel W. Boller and Kathleen M. Boller timely returned a properly executed Consent Order and waivers of service of summons for both named defendants, but also identified an error in the names on the waivers. In addition, the returned waiver of service of summons bearing the printed name "Kathleen M. Boller Revocable Living Trust" (copy attached as Exhibit 2) was executed by Kathleen M. Boller in her capacity as Trustee for the "Daniel Winslip Boller and Kathleen Marlow Boller Revocable Living Trust U/A 1995."

4. Correction of the error identified herein will not require alteration of the Consent Order already properly executed by Daniel W. Boller and Kathleen M. Boller as trustees

for the Daniel W. Boller & Katholeen M. Boller Revocable Living Trust. However, the Consent Order cannot be submitted for Court approval until the Trust is properly named as the Subfile defendant and an approved waiver of service of summons is filed for the Trust.

5. The Hydrographic Survey of the Zuni River Stream System has not identified Daniel W. Boller to be a potential claimant of any other water rights than those involved in Subfile ZRB-4-0055. His joinder as a defendant in his individual capacity appears to have resulted solely from an erroneous interpretation of an ambiguity in the ownership information obtained from county records.

WHEREFORE, the Plaintiffs move the Court to enter an order (1) correcting the defendant's name "KATHLEEN M. BOLLER REVOCABLE LIVING TRUST" to "DANIEL W. BOLLER & KATHLEEN M. BOLLER REVOCABLE LIVING TRUST"; (2) approving the *Waiver of Service of Summons* bearing the printed name "Kathleen M. Boller Revocable Living Trust" but signed by Kathleen M. Boller in her capacity as Trustee for the "Daniel Winslip Boller and Kathleen Marlow Boller Revocable Living Trust U/A 1995" as an effective waiver of service of summons on behalf of the Daniel W. Boller & Kathleen M. Boller Revocable Living Trust; and (3) dismissing DANIEL W. BOLLER, in his individual capacity, as a party defendant from this case.

Dated: December 15, 2006

Respectfully submitted,



BRADLEY S. BRIDGEWATER
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COUNSEL FOR THE UNITED STATES

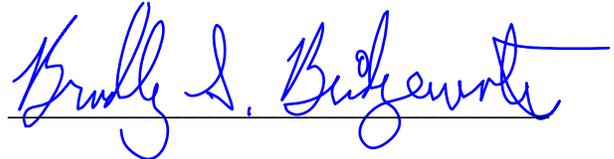
(approved via email 12/15/2006)

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COUNSEL FOR THE STATE OF NEW
MEXICO EX REL. STATE ENGINEER

CERTIFICATE OF SERVICE

I hereby certify that, on December 15, 2006, a copy of the foregoing *Motion To Correct Defendant's Name, Approve Waiver Of Service, And Dismiss Erroneously Named Defendant* was mailed to the following persons.

A handwritten signature in blue ink, reading "Bradley L. Buzenroth", is written over a horizontal line.

Special Master Vickie L. Gabin
U.S. District Court
District of New Mexico
P.O. Box 2384
Santa Fe, NM 87504-2384

Edward Bagley
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DANIEL W. BOLLER & KATHLEEN M. BOLLER
REVOCABLE LIVING TRUST and
Daniel W. Boller
P.O. Box 67
Ramah, NM 87321