UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA
and
ZUNI INDIAN TRIBE,

Plaintiffs,

NO. 07CV00681 BB

vs.

Subproceeding 1
Zuni Indian Claims

STATE OF NEW MEXICO, ex rel.
STATE ENGINEER, et. al.,

Defendants..

ANSWER TO UNITED STATES' SUBPROCEEDING COMPLAINT (DOC # 1) AND ZUNI INDIAN TRIBE'S SUPPLEMENTAL SUBPROCEEDING COMPLAINT (DOC # 2)

NOW ENTERING COURT is William G. Stripp, Attorney at Law, on behalf of Paul Davis; the Paul Davis Survivor's Trust; the JoAnn V. Davis Residual Trust; Pamela Davis; William G. Stripp; Sage Merrill; Anita Davis Schafer; Robert John Schafer; Kristeen Davis; Lucy Kluckhohn Jones; Priscilla Schulte; and Paul Petranto who answer as follows:

ANSWER TO UNITED STATES' SUBPROCEEDING COMPLAINT

1. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 1 of the United States' Subproceeding Complaint.

2. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 2 of the United States' Subproceeding Complaint.

3. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 3 of the United States' Subproceeding Complaint.

4. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 4 of the United States' Subproceeding Complaint.

5. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 5 of the United States' Subproceeding Complaint.

6. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 6 of the United States' Subproceeding Complaint.

7. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 7 of the United States' Subproceeding Complaint.

8. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 8 of the United States' Subproceeding Complaint.

9. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 9 of the United States' Subproceeding Complaint.

10. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 10 of the United States' Subproceeding Complaint.

11. Paragraph 11 of the United States' Subproceeding Complaint contains definitions that the United States is using in an attempt to clarify its Complaint and does not require an admission or denial pursuant to Rule 8(b) of the Federal Rules of Civil Procedure.

12. Paragraph 12 of the United States' Subproceeding Complaint contains definitions that the United States is using in an attempt to clarify its Complaint and does not require an admission or denial pursuant to Rule 8(b) of the Federal Rules of Civil Procedure.

13. Paragraph 13 of the United States' Subproceeding Complaint contains definitions that the United States is using in an attempt to clarify its Complaint and does not require an admission or denial pursuant to Rule 8(b) of the Federal Rules of Civil Procedure.

14. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 14 of the United States' Subproceeding Complaint.

15. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 15 of the United States' Subproceeding Complaint.

16. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 16 of the United States' Subproceeding Complaint.

17. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 17 of the United States' Subproceeding Complaint.

18. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 18 of the United States' Subproceeding Complaint.

19. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 19 of the United States' Subproceeding Complaint.

20. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 20 of the United States' Subproceeding Complaint.

21. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 21 of the United States' Subproceeding Complaint.

22. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 22 of the United States' Subproceeding Complaint.

23. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 23 of the United States' Subproceeding Complaint.

24. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 24 of the United States' Subproceeding Complaint.

25. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 25 of the United States' Subproceeding Complaint.

26. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 26 of the United States' Subproceeding Complaint.

27. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 27 of the United States' Subproceeding Complaint.

28. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 28 of the United States' Subproceeding Complaint.

29. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 29 of the United States' Subproceeding Complaint.

30. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 30 of the United States' Subproceeding Complaint.

31. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 31 of the United States' Subproceeding Complaint.

ANSWER TO ZUNI INDIAN TRIBE'S
SUPPLEMENTAL SUBPROCEEDING COMPLAINT

1. Defendants lack knowledge or information sufficient to form a belief about the truth of the factual allegations, which are incorporated by reference in paragraph 1 of the Zuni Tribe's Supplemental Subproceeding Complaint. With regard to the incorporation of definitions that the United States is using in an attempt to clarify its Complaint, Defendants are not required to provide an admission or denial pursuant to Rule 8(b) of the Federal Rules of Civil Procedure.

2. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 2 of the Zuni Tribe's Supplemental Subproceeding Complaint.

3. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 3 of the Zuni Tribe's Supplemental Subproceeding Complaint.

4. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 4 of the Zuni Tribe's Supplemental Subproceeding Complaint.

5. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 5 of the Zuni Tribe's Supplemental Subproceeding Complaint.

6. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 6 of the Zuni Tribe's Supplemental Complaint.

7. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 7 of the Zuni Tribe's Supplemental Subproceeding Complaint.

8. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 8 of the Zuni Tribe's Supplemental Subproceeding Complaint.

9. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 9 of the Zuni Tribe's Supplemental Subproceeding Complaint.

AFFIRMATIVE DEFENSES

1. As a first affirmative defense, Defendants assert that this matter should be dismissed under Rule 12(b)(6), because plaintiffs have failed to state a claim upon which relief can be granted.

2. As a second affirmative defense, Defendants assert that plaintiffs' complaints are barred by estoppel.

3. As a third affirmative defense, Defendants assert that plaintiffs' complaints are barred by laches.

4. As a fourth affirmative defense, Defendants assert that plaintiffs' complaints are barred by waiver.

5. As a fifth affirmative defense, Defendants assert that plaintiffs' complaints are barred by res judicata.

6. As a sixth affirmative defense, Defendants asserts that plaintiffs' complaints are barred by the Fifth Amendment to the United States Constitution in that they seek to take private property for public use, without just compensation.

7. As a seventh affirmative defense, Defendants assert that plaintiffs' complaints are barred by the Fourteenth Amendment to the United States Constitution in that plaintiffs are seeking to deprive Defendants of their property, without due process of law; and to deny Defendants the equal protection of the laws.

8. As an eighth affirmative defense, Defendants assert that plaintiffs' complaints are barred by their failure to mitigate damages.

9. As a ninth affirmative defense, Defendants assert that plaintiffs' complaints are barred by accord and satisfaction through previous settlement of plaintiffs' water rights claims.

10. As a tenth affirmative defense, Defendants assert that plaintiffs' complaint are barred by the doctrine of prescription or adverse possession of any water rights plaintiffs are claiming.

11. As an eleventh affirmative defense, Defendants assert that plaintiffs' complaints are barred by payment for any water rights plaintiffs are claiming.

12. As a twelfth affirmative defense, Defendants assert that plaintiffs' complaints are barred by the non-use of any water rights that plaintiffs are now claiming.

13. As a thirteenth affirmative defense, Defendants assert that plaintiffs' complaints are barred by their abandonment of any water rights claimed.

14. Defendants incorporate by reference and assert the fifteen affirmative defenses raised by the State of New Mexico in its Answer (document no. 166).

REQUEST FOR JUDGMENT

WHEREFORE, Defendants request that this Court:

(1) Deny plaintiffs their requested prayer for relief;

(2) Declare that plaintiffs have no interest or ownership rights in any water that falls upon, flows through, or lies beneath land that Defendants own or have an interest in;

(3) Declare that Defendants own all water that falls upon, flows through, or lies beneath land that they own or have an interest in, including, but not limited to the right to divert, impound, pump, and otherwise use those waters;

(4) Award Defendants their attorney's fees and costs; and

(5) Award Defendants such other and further relief as the Court may deem just and proper.

Date: January 30, 2008

Respectfully submitted,

----signed electronically-------

WILLIAM G. STRIPP
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Certificate of Service

I HEREBY CERTIFY that on January 30, 2008, I filed the foregoing electronically through the CM/ECF system, which caused counsel and parties pro se who have entered an appearance to be served by electronic means.

----signed electronically by William G. Stripp, Attorney at Law----