

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

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Robert J. ...
CLERK U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES

Plaintiff

v.

STATE of NEW MEXICO ENGINEER,
STATE OF NEW MEXICO COMMISSIONER
of PUBLIC LANDS, and A & R
Productions, A T & T; A. T. & T.
Communications, Inc.; Abeyta,
Inez; Abeyta, Mary Inez;
Abraham, Lawrence T.; Acheson, Jill;
Acosta, Richard; Acuff, Anne, et al.;
Adair, Gertrude; Adams, Daniel J.,
Trustees; Ahner, Jo Ann;
Aker, Elizabeth S.; Albuquerque
Museum Foundation; Alder, Donald &
Yvonne, Trustees; Alelyunas, Edward
& Marcia A. Miolano; Alflen,
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Aurora V.; Allender, Millicent &
Michael; Alonzo, Vincent E.;
Ambrose, Dale R. & Teri L.;
Amsden, Timothy L. & Lucia L.;
Andersen, Kurt W. & Cynthia L.;
Anderson, Anthon & Diane; Anderson,
Darrell L. & E. Josephine; Anderson,
Elmo D. & Mary A.; Anderson,
Cont.

Civil Action No.

CIV 01 0072 BB|WWD

UNITED STATES' COMPLAINT

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Defendants.

Comes now the United States in its own right and at the request of the Secretary

of the Interior and pursuant to the authority of the Attorney General, complains and alleges as follows:

I. Nature of the Action

1. This is an action to quiet the title of the United States in its own right and on behalf and for the benefit of the Zuni Indian Tribe, the Navajo Nation, the Ramah Navajo Band, and various individual Indians having interests in trust patents within the Zuni River basin, to the use of the surface water and groundwater in the Zuni River basin in New Mexico. On its own behalf, the United States claims 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. This is also an action for a declaratory judgment to establish the priority and extent of the Plaintiffs' rights in the surface water and groundwaters of the Zuni River basin in New Mexico as well as the priority and extent of all the defendant-claimants' rights in the surface water and groundwaters of the Zuni River basin in New Mexico.

II. Jurisdiction and Venue

2. Jurisdiction is conferred by 28 U.S.C. § 1345. Relief may be awarded pursuant to 28 U.S.C. §§ 2201 and 2202. This Court has venue of this action because the waters are located within the venue of the District Court of New Mexico under 28 U.S.C. §§ 111 and 1391(b)(2).

III . Description of the Issue

3. The Zuni Indian Tribe, the Navajo Nation, the Ramah Band of Navajo, and various individual Indians having interests in trust patents within the Zuni basin are vested with rights to the use of surface water and groundwater within the Zuni River basin in New Mexico. These rights are based on the laws of Spain and Mexico as well as the laws of the United States and statutes of the State of New Mexico.

The United States, with the establishment of the El Morro National Monument, the El Malpais National Monument, the El Malpais National Conservation Area and the Cibola National Forest, implicitly and expressly reserved the surface water and groundwater within the Zuni River basin in New Mexico necessary to satisfy the purpose(s) of each reserve. The United States also has reserved water for each spring and water hole located on federally owned public land within the Zuni River basin in New Mexico and has appropriated water under the laws of the State of New Mexico.

These enumerated rights to the use of the surface water and groundwaters of the Zuni River basin in New Mexico are based on the laws of the United States and statutes of the State of New Mexico and in most instances are prior and paramount to other water rights in the Zuni River basin in New Mexico.

IV Parties

4. Plaintiff, United States in its own right and as trustee for and on behalf of the Zuni Indian Tribe, the Navajo Nation, the Ramah Band of Navajo, and various individual Indians having interests in trust patents within the Zuni River basin, brings this action to protect

U.S. Department of Justice
Charles E. O'Connell, Jr.
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their aboriginal and federally reserved rights to the use of the surface water and groundwaters of the Zuni River basin in New Mexico.

Plaintiff, the United States, also claims ownership of the right to the use of the surface water and groundwaters within the Zuni River basin in New Mexico in its sovereign and proprietary capacity in such amounts as to satisfy the purpose(s) of the Cibola National Forest, the El Morro National Monument, the El Malpais National Monument, the El Malpais National Conservation Area, and the reservation of tracts of public land containing springs and water holes, and in such amounts as have been appropriated by the United States under the laws of the State of New Mexico. The United States brings this action to protect its property rights in the use of waters in the Zuni River basin in New Mexico.

5. Defendants are all persons or entities claiming rights or interests in the use of the surface and groundwaters waters of the Zuni River basin in New Mexico including the right to divert, impound, pump, and use water in the Zuni River basin in New Mexico adverse to and in violation of the rights of the Plaintiff. The Defendants' use of surface and groundwater in the Zuni River basin in New Mexico constitutes an unlawful interference with the Plaintiffs' right to the use of that water. All those who claim a right or an interest in the use of the waters of the Zuni River basin in New Mexico are necessary and indispensable parties to a general stream adjudication.

6. The State of New Mexico, through its State Engineer and its Public Land Commissioner, are named as defendants in a proprietary capacity, in a governmental capacity as regulator of water users and as trustee of the natural resources in accordance with state law, and

as trustee for all persons and entities within the State of New Mexico claiming an interest in the subject waters.

V. Facts

7. The Zuni River basin is bounded on the north by the Puerco River watershed, on the east by the Continental Divide, and on the south by the headwaters of the Little Colorado River. The basin is drained by the Zuni River, the Rio Nutria, the Rio Pescado, Jaralosa Canyon and their tributaries in the west-central part of the State of New Mexico in McKinley and Cibola counties.

8. Groundwater supplies upon which Plaintiffs are dependent are derived primarily from the San Andres-Glorieta aquifer.

9. The surface water and groundwater sources within the Zuni River basin in New Mexico are hydrologically connected to each other.

10. The Zuni Indian Tribe is a federally recognized tribe owning and residing on lands in the Zuni River basin in New Mexico.

11. From time immemorial – and for centuries prior to Spanish occupation – the Zuni Indian Tribe and its members have lived on, cultivated, and occupied lands in the Zuni River basin. The Zuni Indian Tribe received from the Spanish Crown in 1689 a grant of land in what was later to become the State of New Mexico.

12. By the Treaty of Guadalupe Hidalgo of 1848, (9 Stat. 922), the United States acquired jurisdiction over the grant lands.

13. Congress, by Act of March 3, 1931 (46 Stat. 1509), confirmed the Spanish grant and a patent, dated February 15, 1933, was issued. Prior to Congressional confirmation of the Zuni land grant, a reservation was established for the Zuni Indian Tribe by Executive Order of March 16, 1877. The original Spanish grant lands lie entirely within the more than 200,000 acres of the 1877 reservation.

14. Various parcels of land have been added to the original reservation by executive orders and acts of Congress. (The executive orders and acts of Congress which enlarged the 1877 reservation include the Executive Order of May 1, 1883 (I Kappler 800), the Executive Order of February 17, 1912 (III Kappler 670), the Executive Order of 1917, (40 Stat. 1723), purchases pursuant to the Indian Reorganization Act of 1934 (48 Stat. 984), the Act of June 20, 1935 (49 Stat. 393), the Act of August 13, 1949 (63 Stat. 604-05), and the Act of March 16, 1962, (76 Stat. 33)).

15. The Zuni Indian Tribes' occupancy and ownership of lands within the Zuni Indian Reservation has been at all times recognized by the Spanish Crown, the Republic of Mexico, the United States, and the State of New Mexico. From time immemorial, the Zuni Indian Tribe and its members have used the waters of the Zuni River basin in New Mexico for religious, municipal, domestic, irrigation, livestock watering, industrial, recreation, and other homeland purposes. The laws of the United States as well as the laws of Spain and Mexico protect the Zuni Indian Tribe's right and the right of its members to the use of waters in the Zuni River basin in New Mexico to satisfy the needs described herein. State of New Mexico v. Aamodt, 618 F.Supp. 993 (D.N.M. 1985), 537 F.2d 1102 (10th Cir. 1976).

U.S. Department of Justice
Charles E. O'Connell, Jr.
601 Pennsylvania Ave., N.W.
Washington, DC 20004
(202) 305-0261

16. Various members of the Zuni Indian Tribe own and reside on lands outside of the Zuni Indian Reservation but within the Zuni River basin in New Mexico. These lands were reserved by treaties, statutes, executive orders and land withdrawals and are held in trust by the United States. These individual Zuni Indian allottees have lived on and occupied their lands in the Zuni River basin in New Mexico and have used the waters of the Zuni River basin in New Mexico for religious, municipal, domestic, irrigation, livestock watering, industrial, recreation, and other homeland purposes. Their occupancy and ownership of lands has been at all times recognized by the United States and the State of New Mexico. Federal law protects each allotment's right to the use of waters within the Zuni River basin in New Mexico to satisfy the needs described herein. Winters v. United States, 207 U.S. 564 (1908); United States v. Powers, 305 U.S. 527 (1938).

17. The Navajo Nation is a federally recognized tribe and the beneficial owner of lands in the Zuni River basin in New Mexico, held in trust by the United States.

18. The Navajo Nation has also been known as the Navajo Tribe of Indians. From time immemorial, members of the Navajo Nation have lived on, cultivated crops, and occupied lands in the Zuni River basin in New Mexico.

19. By treaty of 1868, the Navajo Reservation was created for the benefit of Navajo Tribe of Indians and its members. None of the original treaty reservation is located in the Zuni River basin in New Mexico; however, the Navajo reservation was expanded by statutes, executive orders and public land withdrawals to include lands within the Zuni River basin in New Mexico. These lands in the Zuni basin in New Mexico include portions of Navajo Grazing

District 16 located in T. 11 & 12 N., R. 18 through 21 W.; T. 13 & 14 N.; R. 17 through 21 W., and Ramah Chapter located in T. 6 N., R. 14 W.; T. 7 N., R. 14 through 16 W., New Mexico Principal Meridian.

20. From time immemorial, the Navajo Nation and its members have used the waters of the Zuni River basin in New Mexico for religious, municipal, domestic, irrigation, livestock watering, industrial, recreation, and other homeland purposes.

21. The laws of the United States grant to the Navajo Nation and its members right to the use of waters in the Zuni River basin in New Mexico to satisfy the needs described herein. Winters v. United States, 207 U.S. 564 (1908).

22. Members of the Ramah Band of Navajos reside within the Ramah Chapter, a political subdivision of the Navajo Nation. The lands of the Ramah Chapter consist of lands held in trust by the United States for the benefit of the Navajo Nation, lands held in trust by the United States for the benefit of the Ramah Band of Navajos, and lands held in trust for individual Indians. Ramah Navajo is a Band of the Navajo Nation and a community owning and residing on lands in the Zuni River basin in New Mexico. These lands, described in paragraph 19, were reserved by statutes, executive orders and public land withdrawals and are held in trust by the United States.

23. From time immemorial, members of the Ramah Navajos have lived on and occupied lands in the Zuni River basin in New Mexico and have used the waters of the Zuni River basin in New Mexico for religious, municipal, domestic, irrigation, livestock watering, industrial, recreation, and other homeland purposes. Their occupancy and ownership of lands

has been at all times recognized by the United States and the State of New Mexico. Federal law protects the right of the Ramah Band of Navajo and its members to the use of waters within the Zuni River basin in New Mexico to satisfy the needs described herein. Winters v. United States, 207 U.S. 564 (1908); United States v. Powers, 305 U.S. 527 (1938).

24. Various individual Navajo allottees own and reside on lands in the Zuni River basin in New Mexico within a portion of Navajo Grazing District 16 and Ramah Chapter as described in paragraph 19. These lands were reserved by treaties, statutes, executive orders and land withdrawals and are held in trust by the United States. Navajo allottees have lived on and occupied allotted lands in the Zuni River basin in New Mexico and have used the waters of the Zuni River basin in New Mexico for religious, municipal, domestic, irrigation, livestock watering, industrial, recreation, and other homeland purposes. Their occupancy and ownership of lands has been at all times recognized by the United States and the State of New Mexico. Federal law protects each allotment's right to the use of waters within the Zuni River basin in New Mexico to satisfy the needs described herein. Winters v. United States, 207 U.S. 564 (1908); United States v. Powers, 305 U.S. 527 (1938).

25. Cibola National Forest is located within the Zuni River basin in New Mexico. The Cibola National Forest was established by Presidential Proclamation of March 2, 1909, (35 Stat. 2242). The United States claims a federal reserved right in amounts necessary to fulfill the primary purpose(s) of the national forest and appropriate water rights based on state law. United States v. New Mexico, 438 U.S. 696 (1978) and Arizona v. California, 373 U.S. 546 (1963).

26. The El Morro National Monument is within the Zuni River basin in New Mexico. The El Morro National Monument was established by Presidential Proclamation No. 695, on December 8, 1906, (34 Stat. 3264), amended by Act of June 18, 1918, (40 Stat. 1673), and Act of June 14, 1950, (64 Stat. 211). The United States claims a federal reserved right in the amounts necessary to carry out the purposes for which the national monument was designated. The United States also claims appropriative water rights based on state law.

27. A portion of the El Malpais National Monument is located within the Zuni River basin in New Mexico. The El Malpais National Monument was established by Title I of the Act of December 31, 1987, Pub. L. No. 100-225, 101 Stat. 1539, codified as amended at 16 U.S.C. §§ 460uu through 460uu-50 (2000), in order to preserve for the benefit and enjoyment of present and future generations that area in western New Mexico containing the nationally significant Grants Lava Flow, the Las Ventanas Chacoan Archeological Site, and other significant natural and cultural resources. Pursuant to the express reservation of water in the above-referenced legislation, the United States claims a federal reserved right for the benefit of all lands that are or shall become part of the national monument in the amounts necessary to carry out the purposes for which the national monument was designated. As stated in the legislation, the priority date of the federal reserved right is December 31, 1987. The United States also claims appropriative water rights based upon state law.

28. A portion of El Malpais National Conservation Area ("NCA") is located within the Zuni River Basin in New Mexico. El Malpais National Conservation Area was established by Title III of the Act of December 31, 1987, Pub. L. No. 100-225, 101 Stat. 1539,

codified as amended at 16 U.S.C. §§ 460uu through 460uu-50 (2000), in order to protect for the benefit and enjoyment of future generations that area in western New Mexico containing the La Ventana Natural Arch and the other unique and nationally important geological, archeological, ecological, cultural, scenic, scientific, and wilderness resources of the public lands surrounding the Grants Lava Flow. El Malpais National Conservation Area is administered by the Bureau of Land Management. Pursuant to the express reservation of water in the above-referenced legislation, the United States claims a federal reserved water right for the benefit of all lands that are or shall become part of the NCA in the amounts necessary to carry out the purposes for which the NCA was designated. As stated in the legislation, the priority date of the federal reserved water right is December 31, 1987. The United States also claims appropriative water rights based on state law.

29. Numerous tracts of federally owned public land administered by the Bureau of Land Management are located within the Zuni River Basin in New Mexico. Portions of those tracts of public land containing springs or water holes were withdrawn from settlement, location, sale, or entry and reserved for public use by the Executive Order of April 17, 1926, also known as Public Water Reserve No. 107. For each such spring and water hole, the United States claims a federal reserved water right in an amount necessary to fulfill the purposes of the above-referenced executive order.

30. For livestock- and wildlife-watering purposes and for other purposes, 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. For each such pond, tank, well, or other water-control structure or device, the United States claims an appropriative water right under New Mexico state law in an amount based on the amount of water beneficially used.

VI Claim I

31. The subject matter of this suit is the adjudication of all claims to the right to divert, impound, pump or use the surface water and groundwaters of the Zuni River basin in New Mexico.

32. Plaintiffs and each of them as against the named defendants and those to be later identified and named, claim a prior and paramount right to divert, impound, pump or use the surface water and groundwaters of the Zuni River basin in New Mexico.

33. The named defendants and those to be later identified and named, claim the right to divert, impound, pump or use the surface and groundwaters of the Zuni River basin in New Mexico. The defendants' claims are adverse to and jeopardize the exercise of plaintiffs' rights to the use of the surface water and groundwaters of the Zuni River basin in New Mexico.

34. An adjudication of the rights of all claimants to divert, impound, pump or use the surface water and groundwaters of the Zuni River basin in New Mexico is necessary in order to make possible a lawful and orderly administration of the waters of the Zuni River basin in New Mexico.

WHEREFORE, the United States prays that this Court:

(1) orders each and all defendants claiming a right to the use of the surface water and groundwater of the Zuni River basin in New Mexico to appear before the Court and set forth

fully the basis of their claims to the use of that water. Specifically the order should require the claimant to specify:

- (a) When the water right was initiated;
- (b) If a water right for irrigation is claimed, the claimant is to provide a legal description of the lands on which the water is used;
- (c) The source of the water;
- (d) The purpose for which it is used;
- (e) The amount of water used;
- (f) Such other matters as may be necessary to define the water right and the priority date;

(2) orders the New Mexico State Engineer, pursuant to Section 72-4-17 N.M.S.A., to prepare and complete at his earliest opportunity a comprehensive hydrographic survey describing the surface water and groundwater resources of the Zuni River basin in New Mexico, identifying all defendants who claim a right to divert, impound, pump or use the surface water and groundwater of the Zuni River basin in New Mexico;

(3) determines, declares, and decrees the rights of the plaintiff against each of the parties and inter sese, in and to the use of the surface water and groundwater of the Zuni River basin in New Mexico and enters a decree setting forth the existence, extent and date of priority of each such right;

(4) determines, declares, and decrees that the United States as trustee for the Zuni Indian Tribe, the Navajo Nation, the Ramah Navajo Band, and various individual Indians having interests in trust patents within the Zuni basin have the right to divert, impound, pump and beneficially use so much of the surface water and groundwater of the Zuni River basin in New Mexico as is or may become necessary for the needs and purposes of such entities, and that

such right be declared to have a priority date of time immemorial aboriginal date or, where appropriate, the date of federal action reserving the lands for Indian use;

(5) determines, declares, and decrees that the United States, pursuant to the laws of the United States, has the right to divert, impound, pump and use so much of the surface water and groundwater of the Zuni River basin in New Mexico as is or may become necessary to carry out the purposes for which the El Morro National Monument and the El Malpais National Monument were designated, and that such rights be declared to have a priority date of the date the monuments were designated;

(6) determines, declares, and decrees that the United States, pursuant to the laws of the United States, has the right to divert, impound, pump and use so much of the surface water and groundwater of the Zuni River basin in New Mexico as is or may become necessary to carry out the purposes for which the El Malpais National Conservation Area ("NCA") was designated, and that the water right be declared to have a priority date of the date the NCA was designated;

(7) determines, declares, and decrees that the United States, pursuant to the laws of the United States and statutes of the State of New Mexico, has the right to divert, impound, pump and use so much of the surface water and groundwater of the Zuni River basin in New Mexico as is or may become necessary to carry out the primary purposes for which the Cibola National Forest was designated, and that such rights be declared to have a priority date of the date the national forest was designated;

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(8) determines, declares, and decrees that the United States, pursuant to the laws of the United States, has reserved for each spring and water hole located on federally owned public land within the Zuni River basin in New Mexico the amount of water necessary to fulfill the purposes of the Executive Order of April 17, 1926, also known as Public Water Reserve No. 107;

(9) determines, declares, and decrees that the United States has appropriated water under the laws of the State of New Mexico on federally owned lands within the Zuni River basin in New Mexico, in such amounts to be proved by the United States;

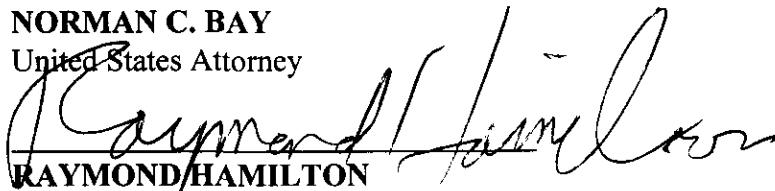
(10) determines, declares, and decrees any other claims asserted by the United States in these proceedings;

(11) adds such additional party-defendants from time to time as may appear necessary to determine and adjudicate all water rights in the Zuni River basin in New Mexico;

(12) awards such other and further relief as the Court may deem just and proper.

Respectfully submitted this __ day of _____, 2001.

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