

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

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UNITED STATES, for itself and as Trustee for)
the Zuni Indian Tribe, Navajo Nation and Ramah)
Band of Navajos)

and)

STATE OF NEW MEXICO, ex rel. STATE)
ENGINEER,)

Plaintiffs,)

and)

ZUNI INDIAN TRIBE,)
NAVAJO NATION,)

Plaintiffs-in-Intervention)

v.)

STATE OF NEW MEXICO COMMISSIONER)
of PUBLIC LANDS)

and)

A & R PRODUCTION, et al.,)

Defendants.)

Civil Action No.
01cv0 0072BB/WWD-ACE

ANSWER OF TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC. TO AMENDED COMPLAINT

COMES NOW Defendant Tri-State Generation and Transmission Association, Inc., ("Tri-State"), successor in interest by merger to Plains Electric Generation and Transmission Cooperative, Inc. ("Plains") (misnamed Plains Electric C&T Coop. Inc.), by and through its attorneys, and answers the Amended Complaint of the United States as follows:

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FIRST DEFENSE

I. Nature of the Action

1. Tri State admits that Paragraph 1 of the Amended Complaint is a statement of the nature of this action but is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in Paragraph 1 and therefore denies the same.

II. Jurisdiction and Venue

2. In response to Paragraph 2 of the Amended Complaint, Tri-State states that exclusive jurisdiction and venue are not vested in this Court but admits that non-exclusive jurisdiction is conferred in this Court under 28 U.S.C. § 1345, that this Court has non-exclusive venue under 28 U.S.C. §§ 111 and 1391(b)(2) and that relief may be granted pursuant to 28 U.S.C. §§2201 and 2202 but denies the remainder of averments in Paragraph 2.

III. Parties

3. In response to Paragraph 3 of the Amended Complaint, Tri-State is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 3 and therefore denies these averments.

4. Tri-State admits the averments of Paragraphs 4 and 5 of the Amended Complaint.

5. In response to Paragraph 6, Tri-State admits that at least some of the named Defendants may claim rights or interests in the use of the surface and/or groundwaters of the Zuni River stream system in New Mexico, including the right to divert, impound, pump or otherwise use those waters, depending on

the definition and boundaries of the Zuni River stream system and Zuni River Basin, and admits that all those who claim a right or an interest in the use of the waters of the Zuni River stream system in New Mexico are necessary and indispensable parties in this general stream system adjudication but is without information or knowledge sufficient to form a belief as to the truth of the remainder of averments in Paragraph 6 and therefore denies the same.

IV. Facts

6. In response to Paragraph 7 of the Amended Complaint, Tri-State admits that the Court's Orders of July 15, 2002 and May 21, 2003 define the geographic boundaries of this adjudication and the adjudication boundaries of the Zuni River Stream System and basin and state what they state but is without knowledge or information sufficient to form a belief as to the truth of the remainder of averments in Paragraph 7 and therefore denies the same.

7. Tri-State is without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 and therefore denies the averments within these paragraphs.

VI. Claim I

8. In response to Paragraph 22 of the Amended Complaint, Tri-State admits that this lawsuit seeks what it seeks but is without knowledge or information sufficient to form a belief as to the truth of the remainder of averments in Paragraph 22 and therefore denies the same.

9. In response to Paragraph 23, Tri-State is without knowledge or information sufficient to form a belief as to the truth of the averments in Paragraph 23 and therefore denies the same.

10. In response to Paragraph 24, Tri-State (as successor in interest to Plains, misnamed as Plains Electric C&T Coop. Inc.) admits that it would or could claim the right to divert, impound, pump or use surface and/or groundwaters of the Zuni River stream system in New Mexico, depending on the defined boundaries of this stream system, although Tri-State does not expect to claim such rights based solely on the Court's defined geographic boundaries of this adjudication and adjudication boundaries as defined in its Orders of July 15, 2002 and May 21, 2003 and may disclaim such rights, subject to the Court's proper dismissal of Tri-State based upon these Court defined boundaries and an acceptable Conditional Disclaimer, but is without knowledge or information sufficient to form a belief as to the truth of the remaining averments in Paragraph 24 and therefore denies the same.

11. Tri-State denies the averments in Paragraph 25.

12. Tri-State denies the averments of each and every Paragraph and averment of the Amended Complaint not expressly admitted.

13. Tri-state denies the need for the United States' prayer for relief (Paragraphs 1, 2, 3 and 4).

WHEREFORE, Tri-State prays that the Amended Complaint of the United States be dismissed, that the United States take nothing by its Amended

Complaint and that Tri-State be granted such other and further relief as may be meet and proper in the premises.

Respectfully submitted,

RODEY, DICKASON, SLOAN, AKIN & ROBB, P.A.

By 

Sunny J. Nixon
P. O. Box 1357
Santa Fe, New Mexico 87504-1357
(505) 954-3917 - Telephone
(505) 954-3942 - Facsimile

Attorneys for Tri-State Generation and
Transmission Association, Inc.