

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

UNITED STATES OF AMERICA, )  
ET AL., )  
 )  
 PLAINTIFFS, )  
 )  
 )  
 )  
 )  
 v. )  
 )  
 )  
 )  
 STATE OF NEW MEXICO )  
 COMMISSIONER OF PUBLIC )  
 LANDS, ET AL., )  
 )  
 )  
 DEFENDANTS. )  
\_\_\_\_\_ )

CIV NO. 01- 00072 BDB/WDS  
Subfile: ZRB-2-0092  
  
ZUNI RIVER BASIN  
ADJUDICATION

**FIRST AMENDED ANSWER  
AND COUNTERCLAIM FOR DECLARATORY JUDGMENT**

COME NOW, Robert R. Wallace and Robert J. Wallace (“Wallaces”), by and through their attorneys of record, Law & Resource Planning Associates, P.C., and hereby amend their Subfile Answer (Doc. 810) and also file their Counterclaim for Declaratory Judgment as follows:

**ANSWER**

1. The Wallaces admit the allegations stated in ¶¶ 1 and 2 of the Amended Complaint (Doc. 222).
2. The Wallaces are without sufficient information to determine the truth of the allegations stated in ¶ 3 of the Amended Complaint and therefore deny the same.
3. The Wallaces admit the allegations stated in ¶¶ 4, 5, 6, and 7 of the Amended Complaint.

4. The Wallaces are without sufficient information to determine the truth of the allegations stated in ¶¶ 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23 of the Amended Complaint and therefore deny the same.

5. The Wallaces admit the allegations stated in ¶¶ 24 and 25 of the Amended Complaint.

**ANSWER TO SUBFILE ZRB-2-0092 OFFER**

6. In response to the specific Offer made by the Plaintiffs in Subfile ZRB-2-0092, the Wallaces state that the Offer was declined for the following reasons:

a. The Offer does not recognize the full extent of beneficial use of water on the property;

b. The Offer includes only a .7 acre feet per annum water right under State Engineer Permit G-01068, while the permit specifically allows the Wallaces to divert up to three acre feet per annum of water for irrigation of up to one acre of non-commercial trees, lawn, or garden, and domestic and livestock uses, pursuant to NMSA 1978, § 72-12-1 (2003).

c. The Offer includes injunctive relief not requested in the Amended Complaint which would preclude the Wallaces from using up to three acre feet per annum as allowed by permit No. G-01068.

**AFFIRMATIVE DEFENSES**

The Amended Complaint fails to state a claim for which relief may be granted.

**COUNTERCLAIM FOR DECLARATORY JUDGMENT**

1. This Counterclaim is brought pursuant to 28 USC §2201. There is an actual controversy between the Wallaces and Plaintiffs, including the United States of America and the New Mexico State Engineer, and the Wallaces seek a declaration of the rights and/or legal

relations between them and the plaintiffs.

2. The Wallaces own real property located in the Zuni Basin and that is included within the boundaries of the Zuni Adjudication.

3. The Wallaces own at least one acre of land on which they plan to beneficially use water.

4. In furtherance of their plans to beneficially use water on the property, the Wallaces applied for and obtained a well permit from the New Mexico State Engineer allowing them to divert sufficient water to irrigate one acre of non-commercial trees, lawn and garden, not to exceed three acre feet of water per annum. The well permit is designated as Permit No. G-01068. A copy of the WATERS database summary of the Permit is attached hereto as Exhibit A.

5. Permit No. G-01068 was applied for and issued pursuant to NMSA 1978, § 72-12-1 (2003).

6. In reliance upon the issuance of Permit No. G-01068, the Wallaces drilled and equipped a well, and are in the process of placing water from the well to beneficial use.

7. Plaintiff New Mexico State Engineer, having issued permit No. G-01068, is estopped from preventing the Wallaces from diverting water from well G-01068 up to a maximum of three acre feet per annum.

8. Upon information and belief, the Plaintiffs, including the New Mexico State Engineer, intend to take action to prevent the Wallaces from diverting up to three acre feet per annum from permitted well No. G-01068.

9. The Wallaces have a property right in Permit No. G-01068 issued by the New Mexico State Engineer.

10. It is the public policy of the State of New Mexico, as expressed in NMSA 1978, §

72-12-1, to allow flexibility to owners of wells permitted under that section so that they may divert sufficient water for domestic purposes, livestock purposes, and for irrigating up to one acre of non-commercial trees, lawn and garden.

11. Owners of wells with permits issued pursuant to NMSA 1978, § 72-12-1 may divert sufficient water for domestic use, livestock use, and to irrigate up to one acre of non-commercial trees, lawn and garden regardless of whether they have a vested water right established through prior beneficial use.

**WHEREFORE**, the Wallaces pray the Court to enter Judgment declaring their rights as follows:

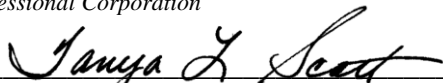
1. The Wallaces may continue to develop well No. G-01068 to the full extent of their permit, notwithstanding the extent of the prior beneficial use of the well.

2. The Wallaces may divert sufficient water from well No. G-01068 for domestic purposes, livestock purposes, and for irrigation of up to one acre of non-commercial trees, lawn and garden, such amount not to exceed three acre feet per annum.

3. The New Mexico State Engineer is estopped to deny the Wallaces the ability to divert water sufficient to irrigate one acre of noncommercial orchard, lawn and garden under permit G-01068.

Respectfully submitted,

LAW & RESOURCE PLANNING ASSOCIATES,  
*A Professional Corporation*

By: 

Charles T. DuMars

Tanya L. Scott

Attorneys at Law

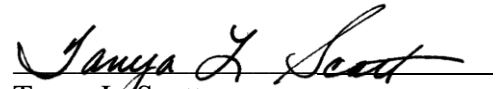
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on October 3, 2011, I filed the foregoing First Amended Answer and Counterclaim for Declaratory Judgment electronically through the CM/ECF system, which caused the parties or counsel reflected on the Notice of Filing to be served by electronic means.

  
Tanya L. Scott