

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,)	No. 01cv0072 BB/LG
)	
and)	
ZUNI INDIAN TRIBE and NAVAJO NATION,)	ZUNI RIVER BASIN
Plaintiffs-in-Intervention)	ADJUDICATION
)	
)	
v.)	Subfile No. ZRB-2-0092
)	
A & R PRODUCTIONS, et al.,)	

**STATE OF NEW MEXICO’S ANSWER TO COUNTERCLAIM FOR DECLARATORY
JUDGMENT OF ROBERT R. WALLACE AND ROBER J. WALLACE**

The State of New Mexico *ex rel.* State Engineer (“State”) answers Robert R. Wallace and Robert J. Wallace’s October 3, 2011 *Counterclaim for Declaratory Judgment* (No. 2716), (“*Counterclaim*”) as follows:

1. The State denies that there is an actual controversy between Counterclaimants and Plaintiffs. The remaining allegations of paragraph 1 of the *Counterclaim* state legal conclusions, make no factual allegations, and the State therefore denies same.
2. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 2 of the *Counterclaim*, and therefore denies same.
3. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph 3 of the *Counterclaim*, and therefore denies same.
4. The State admits Robert Wallace applied for and obtained a well permit from the

New Mexico State Engineer, and that the associated permit number is G 01068. The State asserts that the terms of the permit speak for themselves. The State is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 4 of the *Counterclaim*, and therefore denies same.

5. The State admits the allegations of paragraph 5 of the *Counterclaim*.

6. The State admits a well was drilled under permit number G 01068. The State denies that the well is located in the Zuni Basin, and denies that the well is included within the boundaries of the Zuni Adjudication. The State is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations set forth in paragraph 6 of the *Counterclaim*, and therefore denies same.

7. The allegations of paragraph 7 of the *Counterclaim* state a legal conclusion, make no factual allegations, and the State therefore denies same.

8. The State denies the allegations of paragraph 8 of the *Counterclaim*.

9. The allegations of paragraph 9 of the *Counterclaim* state a legal conclusion, make no factual allegations, and the State therefore denies same.

10. The allegations of paragraph 10 of the *Counterclaim* state a legal conclusion, make no factual allegations, and the State therefore denies same.

11. The allegations of paragraph 11 of the *Counterclaim* state a legal conclusion, make no factual allegations, and the State therefore denies same.

First Affirmative Defense

Counterclaimants fail to state a claim upon which relief can be granted.

Second Affirmative Defense

Counterclaimants' real property, well and any associated beneficial uses of water are not located in the Zuni River stream system, and therefore are not included within the boundaries of this water rights adjudication lawsuit.

Third Affirmative Defense

This Court lacks subject matter jurisdiction to hear the Counterclaim.

Fourth Affirmative Defense

Counterclaimants do not have standing to bring their Counterclaim.

Fifth Affirmative Defense

Counterclaimants have failed to join necessary parties and the Counterclaim must be dismissed.

Sixth Affirmative Defense

Counterclaimants have a plain, speedy and adequate remedy at law.

Seventh Affirmative Defense

No case or controversy exists.

Eighth Affirmative Defense

Any rights Counterclaimants may have to divert and use the waters of the Zuni River stream system are limited by the requirement of prior actual beneficial use.

Ninth Affirmative Defense

Any rights Counterclaimants may have to divert and use the waters of the Zuni River stream system are limited by the terms of their permit and New Mexico law.

WHEREFORE, the State of New Mexico, having answered, respectfully requests that the Court dismiss the Counterclaim, or in the alternative require Counterclaimants prove all elements of its claims to rights to divert and use water.

Electronically Filed

/s/ Edward C. Bagley

Arianne Singer
Edward C. Bagley
Special Assistant Attorneys General
Attorneys for State of New Mexico
P.O. Box 25102
Santa Fe, NM 87504-5102
Telephone: (505) 827-6150

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on January 31, 2012, I filed the foregoing electronically through the CM/ECF system, which caused the parties or counsel reflected on the Notice of Electronic Filing to be served by electronic means.