

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

UNITED STATES, et al.

Plaintiffs,

vs.

NO. CV 01-72 BB/WDS (ACE)

A & R PRODUCTIONS, et. al.,

Defendants.

**RESPONSE BY PAUL DAVIS AND THE PAUL DAVIS AND JOANN V. DAVIS
REVOCABLE TRUST DATED MAY 10, 1991 TO THE UNITED STATES' MOTION
TO DROP/DISMISS DEFENDANT PARTIES, FILED ON DECEMBER 23, 2003
AND REQUEST FOR SANCTIONS**

NOW ENTERING COURT is William G. Stripp, Attorney at Law, on behalf of Paul Davis and the Paul Davis and JoAnn V. Davis Revocable Trust dated May 10, 1991, who respond to the Motion to Drop/Dismiss Defendant Parties, filed by the United States on December 23, 2003, as follows:

1. The United States has filed a motion containing the blatant misrepresentation that "Paul & Joann Davis, % Henry & Charlotte Yazzie" and "Paul & JoAnn V. Davis Rev. Trust" "have advised or otherwise indicated in writing that they either do not use or presently claim a right to the use of surface or groundwater within the geographical boundary of the Zuni River Basin as the basin is described by the Court or that they do not presently hold fee title to land within the geographic boundaries of the Zuni River Basin as the basin is described by the Court." See Docket Document no. 294, at pages 1-2.

2. The Paul Davis and JoAnn V. Davis Revocable Trust dated May 10, 1991 holds fee title to a significant amount of real property within the geographical boundary of the Zuni River Basin, including the following: All of Section 3, T9N, R15W; All of Section 9, T10N, R15W; All of Section 11, T10N, R15W; All of Section 13, T10N, R15W; All of Section 15, T10N, R15W; All of Section 23, T10N, R15W; All of Section 33, T10N, R15W; All of Section 35, T10N, R15W; All of Section 24, T11N, R15W; NE $\frac{1}{4}$ of SE $\frac{1}{4}$, Sec 2, T9N, R15W (40 acres); SE $\frac{1}{4}$ of SE $\frac{1}{4}$, Sec 21, T10N, R15W (40 acres); That part of Sec 27, T10N, R15W, NE of HiWay 53 (414.7 acres); That part of Sec 27, T10N, R15W, SW of HiWay 53 (27 acres); S $\frac{1}{2}$ of N $\frac{1}{2}$, Sec 1, T10N, R16W (160 acres); N $\frac{1}{2}$ of S $\frac{1}{2}$, Sec 1, T10N, R16W (160 acres); S $\frac{1}{2}$ of SW $\frac{1}{4}$, Sec 1, T10N, R16W (80 acres); NW $\frac{1}{4}$ of SW $\frac{1}{4}$ of SE $\frac{1}{4}$, Sec 1, T10N, R16W (10 acres); and, N $\frac{1}{2}$ of NW $\frac{1}{4}$, Sec 1, T10N, R16W (51.2 a.) In addition, the Revocable Trust has a partnership interest in The Davis Ltd. Partnership, which holds fee title to real property within the geographical boundary of the Zuni River Basin. In addition the Revocable Trust has lease agreements with the State of New Mexico on the following property: All of Section 36, T10N, R15W; and, Section 2, T9N, R15W (600 acres). The aforementioned real property contains a significant amount of wells and stock tanks, and the Revocable Trust claims a significant amount of water rights associated with the property.

3. The Revocable Trust is selling a limited amount of real property to Henry and Charlotte Yazzie through a real estate contract. The contract has not yet been paid off. The Revocable Trust is still legal owner of the real property and in no way is giving up any water rights associated with the real property, which is being sold to Mr. & Mrs. Yazzie.

4. On September 30, 2003, the Revocable Trust filed its Answer to the Amended Complaint of the United States et al. See Docket Document no. 251. In its Answer the Revocable Trust, and other defendants, “admit that they claim an ownership interest in and rights to the surface water and groundwater on their respective properties or properties they have an interest in, including, but not limited to the right to divert, impound, pump, and otherwise use those waters.” See Docket Document no. 251, at page 3, paragraph 11. Therefore, it is clear that the Revocable Trust has indicated that it is claiming a right to the use of surface or groundwater within the geographical boundary of the Zuni River Basin.

5. In its Affirmance of Scheduling Order and Denial of Pending Motion to Dismiss, filed on December 9, 2003, the Court found as follows: “Plaintiff United States filed this lawsuit in January 2001. It now appears clear this was done with little planning or understanding of Plaintiff’s responsibility for the litigation or its duty as fiduciary for the Native American Tribes.” The United States continues to go forward with “little planning or understanding of Plaintiff’s responsibility for the litigation”, which is costing defendants time and money. While the Revocable Trust believes that the complaint in this matter should be dismissed, it retained counsel and filed its answer when it became clear that the Court was going to allow the complaint to go forward. The Revocable Trust then spent significant time inventorying the water resources which exist on its land holdings, to comply with a Court ordered reporting deadline of December 31, 2003. Now the Revocable Trust has to waste time responding to a Motion to Dismiss, which contains the misrepresentation that it is claiming no right to the use of surface or groundwater within the geographical boundary of the Zuni River Basin.

6. The Revocable Trust questions whether or not other landowner/defendants listed in the Motion to Dismiss have been properly named. For example, Defendant Paul Petranto is currently involved in litigation with Christina Wieland, who is listed as landowner no. 231 in the Motion to Dismiss. See Petranto v. Wieland et al, McKinley County District Court case number CV-2002-18-1. Mrs. Wieland owns significant real property interests, and it would be quite surprising if she was disclaiming all water rights associated with her real property. Petranto purchased one of his lots from Mrs. Wieland. The lot has a stream going through it, which also goes through property owned by Mrs. Wieland and/or her children. Mrs. Wieland and/or her children have placed a series of small dams in the stream, which has caused concern to Petranto. The placement of dams in a stream is inconsistent with a disclaimer of water rights.

7. The Revocable Trust requests an award of attorney's fees and costs associated with having to respond to a motion which was filed without proper investigation of the facts by Plaintiff United States.

Date: December 28, 2003

Respectfully submitted,

----signed electronically-----

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Certificate of Mailing

This certifies that on 12/28/03 this pleading was mailed to the following individuals:

Vickie Gabin, Special Master;
Charles E O'Connell, Jr., Attorney for Plaintiff United States;
Edward C Bagley, attorney for Plaintiff State of New Mexico;
Jane Marx, attorney for Plaintiff in Intervention Zuni Indian Tribe; and
Stanley M. Pollack, attorney for Plaintiff in Intervention the Navajo Nation.

by placing the pleading in envelopes with postage prepaid and placing the envelopes with the US Post office in Ramah, NM for delivery.

----signed electronically-----

William G. Stripp
Attorney at Law