

**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,)
)
and)
)
ZUNI INDIAN TRIBE, NAVAJO NATION,)
)
Plaintiffs in Intervention,)
)
v.)
)
A & R PRODUCTIONS, et al.,)
)
Defendants.)
)

Case No. 01CV00072-MV/WPL

**ZUNI RIVER BASIN
ADJUDICATION**

MOTION FOR SUBSTITUTION OF PARTY

Pursuant to Rule 25(c), Fed. R. Civ. P., Plaintiffs United States of America and the State of New Mexico ex rel. State Engineer hereby move the Court to enter an order (1) substituting DARRYL V. NICHOLS for Defendants PAUL E. BOTELHO and ROBIN K. HAYES, and (2) dismissing PAUL E. BOTELHO and ROBIN K. HAYES as parties defendant from this action. As grounds in support of this Motion, Plaintiffs state as follows:

1. Pursuant to the Special Master’s September 27, 2006 *Order Granting Joint Motion to Amend Procedural and Scheduling Orders and Establish or Revise Deadlines for Defendants to Return Request for Consultation and Submit Subfile Answers* (Doc. No. 837), the

United States served Paul Botelho and Robin Hayes with a proposed consent order for Subfile ZRB-1-0139 and with other required service items. Robin Hays accepted service and contacted counsel for the United States on April 4, 2017, to convey that the property had been sold to Darryl V. Nichols.

2. By warranty deed dated December 7, 2016, and recorded in the Office of the Cibola County Clerk on January 20, 2017, Paul Botelho and Robin Hayes conveyed their interest in the property associated with Subfile ZRB-1-0139 to Darryl V. Nichols.

3. The Hydrographic Survey of the Zuni River Stream System has not identified Darryl V. Nichols to be a potential claimant of any water rights in the Zuni River basin other than those involved in Subfile ZRB-1-0139.

4. Pursuant to Rule 25(a)(3) and (c), Fed. R. Civ. P., this Motion is being served upon Darryl V. Nichols in the manner provided in Rule 4(e)(1), Fed. R. Civ. P., and Arizona Rules of Civil Procedure 4.1(d), for service of a summons by waiver.

WHEREFORE, the Plaintiffs respectfully move the Court to enter an order (1) substituting DARRYL V. NICHOLS for Defendants PAUL E. BOTELHO and ROBIN K. HAYES, and (2) dismissing PAUL E. BOTELHO and ROBIN K. HAYES as parties defendant from this action.

DATED: June 9, 2017.

Respectfully submitted,

/s/ Samuel D. Gollis
Samuel D. Gollis
U.S. Department of Justice
999 18th Street
South Terrace, Suite 370
Denver, CO 80202

(303) 844-1351
Andrew "Guss" Guarino
Bradley S. Bridgewater
U.S. Department of Justice
999 18th Street
South Terrace, Suite 370
Denver, CO 80202
(303) 844-1343

COUNSEL FOR THE UNITED STATES

AND

/s/ Edward C. Bagley 6/09/17
Edward C. Bagley
Special Assistant Attorney General
P.O. Box 25102
Santa Fe, NM 87504-5102
(505) 827-6150

COUNSEL FOR THE STATE OF NEW MEXICO

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 9, 2017, I filed the foregoing *Motion for Substitution of Party* electronically through the CM/ECF system, which caused CM/ECF Participants to be served by electronic means, as more fully reflected on the Notice of Electronic Filing. In addition, I served Defendant Darryl Nichols by first class mail at the address below.

Darryl V. Nichols
1126 W. Monterosa Street
Phoenix, AZ. 85013

Paul E. Botelho
Robin K. Hayes
786 Oakland Ave Ext
Morganton, NC 28655-7863

/s/ Samuel D. Gollis
Samuel D. Gollis