

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

FILED
UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

04 OCT 20 PM 3:39

JW

CLERK-ALBUQUERQUE

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

CAUSE NO. 01-CV-00072

and

STATE OF NEW MEXICO, ex rel.
STATE ENGINEER,

Plaintiffs,

vs.

ZUNI INDIAN TRIBE NAVAJO NATION,

Plaintiffs-in-Intervention,

vs

STATE OF NEW MEXICO COMMISSIONER
OF PUBLIC LANDS,

and

A & R PRODUCTIONS,

and

AT&T, et. al.,

Defendants.

ANSWER OF DEFENDANT LIVINGSTON FAMILY PARTNERSHIP
TO AMENDED COMPLAINT FOR ADJUDICATION OF WATER RIGHTS

COMES NOW the Defendant, LIVINGSTON FAMILY PARTNERSHIP, a New
Mexico Limited Partnership, by and through its counsel of record, Dubois, Cooksey & Bischoff,
P.A. (William J. Cooksey), and for its Answer to the Plaintiffs' Amended Complaint for

351

Adjudication of Water Rights states as follows:

I. NATURE OF THE ACTION

1. The Livingston Family Partnership 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 allegations in Paragraph 1 and therefore denies the same.

II. JURISDICTION AND VENUE

2. In response to Paragraph 2 of the Amended Complaint, the Livingston Family Partnership 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 remaining allegations contained in Paragraph 2.

III. PARTIES

3. In response to Paragraph 3 of the Amended Complaint, the Livingston Family Partnership is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 3 and therefore denies the same.

4. The Livingston Family Partnership admits the allegations contained in Paragraphs 4 and 5 of the Amended Complaint.

5. In response to Paragraph 6, the Livingston Family Partnership admits that at least some of the named Defendants may claim rights or interests in the use of the surface and 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 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 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 the allegations contained in Paragraph 6 and therefore denies the same.

IV. FACTS

6. In response to Paragraph 7 of the Amended Complaint, the Livingston Family Partnership 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 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 remaining allegations of Paragraph 7 and therefore denies the same.

7. The Livingston Family Partnership is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraphs 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 21 and therefore denies the same.

V. CLAIM I.

8. In response to Paragraph 22 of the Amended Complaint, the Livingston Family Partnership admits that the lawsuit seeks what it seeks, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 22 and therefore denies the same.

9. In response to Paragraphs 22 and 23, the Livingston Family Partnership is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in these Paragraphs and therefore denies the same.

10. In response to Paragraphs 24 of the Amended Complaint, the Livingston Family Partnership admits that it could or would claim the right to divert, impound, pump or use surface or groundwaters of the Zuni River Stream system in New Mexico, depending on the defined boundaries of this stream system, but is without knowledge or information sufficient to form a belief as to the remaining allegations contained in Paragraph 24 and therefore denies the same.

11. The Livingston Family Partnership denies the allegations contained in Paragraph 25.

12. The Livingston Family Partnership denies the allegations of each and every Paragraph and allegation of the Amended Complaint not expressly admitted herein.

AFFIRMATIVE DEFENSES

13. The Livingston Family Partnership is the owner in fee simple of the following described real property:

A certain tract of land in the Whitewater, McKinley County, New Mexico, area comprising a portion of the South one-half of Section 19, Township 12 North, Range 18 West, N.M.P.M., as more particularly described as follows:

BEGINNING at the Northwest corner of the herein described tract, a point from which the West Quarter corner of said Section 19, as re-established by Clarence C. Goddard, New Mexico Registered Professional Engineer and Land Surveyor No. 1086, bears S88°39'W, 3196.97 feet distant;

THENCE, from the beginning point, 88°39'E, 817.73 feet to the Northeast corner;

THENCE, S1°34'48"E, 2598.89 feet to the Southeast corner;

THENCE, S87°55'25"W, 817.75 feet to the Southwest corner;

THENCE, N1°34'48"W, 2609.26 feet to the place of beginning, containing 48.884 acres more or less.

AND

An undivided one-third (1/3) interest in:

A certain tract of land in the Whitewater, McKinley County, New Mexico, area comprising of a portion of the South one-half of Section 19, Township 12 North, Range 18 West, N.M.P.M., as more particularly described as follows:

BEGINNING at the Northwest corner of the herein described tract, a point from which the West Quarter corner of said Section 19, as re-established by Clarence C. Goddard, New Mexico, Registered Professional Engineer and Land Surveyor No. 1086, bears N.47°12' 27" W, 2409.80 feet distant;

THENCE, from the beginning point, S61°45'E, 370.0 feet to the Northeast corner;

THENCE, S28°15'W, 883.50 feet to the Southeast corner;

THENCE, S87°55'25"W, 428.66 feet to the Southwest corner;

THENCE, N28°15'E, 1100.00 feet to the place of beginning, containing 8.425 acres more or less.

(collectively hereinafter the "Real Property").

14. The Real Property is located in McKinley County, New Mexico, and is not within the boundaries of any Indian Reservation or Indian Allotment.

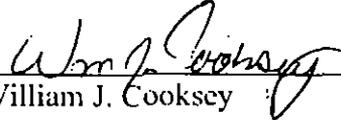
15. The Livingston Family Partnership claims all water rights, ground water, surface or other water rights of any kind which the Real Property provides and running with the Real Property.

16. On October 28, 2003, The Livingston Family Partnership filed its Declarations of Owner of Underground Water Rights concerning the Real Property owned by it with the New Mexico Office of the State Engineer's office. Copies of these Declarations are attached hereto as Exhibits "A" and "B".

17. The Livingston Family Partnership does not waive or otherwise surrender any of its water rights provided by or running with the Real Property.

WHEREFORE, the Livingston Family Partnership prays for an affirmation of its water rights in and to the Real Property; that this Court protect and provide the Livingston Family Partnership with its water rights as provided by law; and for such other and further relief as the Court deems just and proper.

DUBOIS, COOKSEY & BISCHOFF, P.A.

By: 

William J. Cooksey
2040 Fourth Street, N.W.
Albuquerque, New Mexico 87102
Telephone: (505) 243-6721

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed to the following individuals on this 20th day of October, 2004.


William J. Cooksey

Bradley S. Bridgewater
U.S. Department of Justice
999 18th Street, Suite 945 North
Denver, Colorado 80202

New Mexico State Engineer
Edward C. Bagley
P.O. Box 25102
Santa Fe, New Mexico 87504-5102

Jane Marx, Esq.
Attorney for Plaintiff-in-Intervention
Zuni Indian Tribe
2825 Candelaria Road, N.W.
Albuquerque, New Mexico 87107

\$2.00
HC 3/28/80

File Number: 6-01875

NEW MEXICO OFFICE OF THE STATE ENGINEER
DECLARATION OF OWNER OF UNDERGROUND WATER RIGHT

1. DECLARANT
Name: Sumner Family Ltd Partnership Work Phone: 243-6721
Contact: Paul Hubbard Home Phone: 345-2540
Address: 1116 W. Main St. Gallup 563-3018
City: Gallup State: NM Zip: 87301

2. LOCATION OF WELL (A, B, C, or D required, E or F if know)

A. SE 1/4 SW 1/4 SE 1/4 Section: 19 Township: 12N Range: 8W N.M.P.M.
in McKenley County

B. X = _____ feet, Y = _____ feet, N.M. Coordinate System
Zone in the _____ Grant.
U.S.G.S. Quad Map _____

C. Latitude: _____ d _____ m _____ s Longitude: _____ d _____ m

D. East _____ (m), North _____ (m), UTM Zone 13, NAD _____ (27 or 83)

E. Tract No. _____, Map No. _____ of the _____ Hydrographic Survey

F. Lot No. _____, Block No. _____ of Unit/Tract _____ of the
Subdivision recorded in _____ County.

G. Other: _____

H. On land owned by (required): Sumner Family Ltd Partnership

3. DESCRIPTION OF WELL

Date drilled: 1977 Driller: Paul Hubbard

Depth: 446 feet. Outside diameter of casing: _____ inches;

Original capacity 15 gal. per min.; Present capacity 15 gal. per min.;

Pumping lift: _____ feet; Static water level: _____ feet (above) (below) land

surface; Make of pump: _____; Type of pump: _____

Make, type, horsepower, etc., of power plant: _____

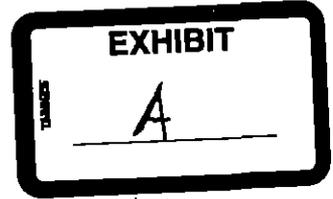
Fractional or percentage interest claimed in well: 100%

File Number: 6-01875

Trn Number: 206993

Form: wc-03

page 1 of 3



UNDER NEW MEXICO LAW, A DECLARATION IS ONLY A
STATEMENT OF DECLARANT'S CLAIM AND FILING DOES
NOT CONSTITUTE APPROVAL OR REJECTION OF CLAIM.

STATE ENGINEER OFFICE
NEW MEXICO
03 OCT 28 PM 2:55

NEW MEXICO OFFICE OF THE STATE ENGINEER
DECLARATION OF OWNER OF UNDERGROUND WATER RIGHT

4. QUANTITY

Consumptive Use: 24.20 acre-feet per annum
Diversion Amount: 24.20 acre-feet per annum

5. PURPOSE OF USE

Domestic: Livestock: Irrigation: Municipal: Industrial:
Commercial: Other (specify): _____
Specific use: _____

6. PLACE OF USE

47.884 acres of land described as follows:

Subdivision of Section (District or Hydrographic Survey)	Section (Map No.)	Township (Tract No.)	Range	Acres
<u>Sec attached Deed</u>	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Who is the owner of the land? Quinnata Family Ltd Partnership

7. WATER WAS FIRST APPLIED TO BENEFICIAL USE ON: 1977 (date)
and since that time has been used fully and continuously for all of the above described purposes except as follows: N/A

8. ADDITIONAL STATEMENTS OR EXPLANATIONS:

This underground water right declaration is not intended to limit or waive any surface, above ground, or other water rights running with the land to which Declarant claims an interest to

NEW MEXICO OFFICE OF THE STATE ENGINEER
DECLARATION OF OWNER OF UNDERGROUND WATER RIGHT

ACKNOWLEDGEMENT FOR NATURAL PERSONS

(1) We, Dawn Cooksey _____ affirm that the
(Please Print)
foregoing statements are true to the best of my knowledge and belief.

Dawn Cooksey
Declarant Signature

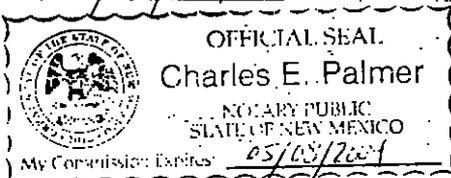
N/A
Declarant Signature

NOTARY

This instrument was acknowledged before me this 26th day of October,
A.D., 2003, by Dawn Cooksey
Name of Applicant

My commission expires 05/08/2004

[Signature]
Notary Public



03 OCT 28 PM 2:55

STATE ENGINEER OFFICE
ALBANY, NEW MEXICO

ACCEPTANCE OF STATE ENGINEER

This Declaration form is hereby accepted for filing in accordance
with NMSA-1978 (1983), as amended.
The acceptance by the State Engineer Office does not constitute validation
of the right claimed.

Vicky O'Brien

UNDER NEW MEXICO LAW, A DECLARATION IS ONLY A
STATEMENT OF DECLARANT'S CLAIM AND FILING DOES
NOT CONSTITUTE APPROVAL OR REJECTION OF CLAIM.

AUG 27

1:21 PM '93

7 1381

CORRECTION *
QUITCLAIM DEED

MARY ANN LIVINGSTON, a widow, dealing with her sole and separate property

for consideration paid quitclaim to LIVINGSTON FAMILY LIMITED PARTNERSHIP, a New Mexico Limited Partnership

whose address is 1116 Martinelli
Gallup, New Mexico 87301

the following described real estate in McKinley County, New Mexico

A certain tract of land in the Whitewater, McKinley County, New Mexico, area comprising a portion of the South one-half of Section 19, Township 12 North, Range 18 West, New Mexico Principal Meridian, more particularly described as follows:

BEGINNING at the Northwest corner of the herein described tract, a point from which the West Quarter corner of said Section 19, as re-established by Clarence C. Goddard, New Mexico Registered Professional Engineer and Land Surveyor No. 1086, bears S88°39'W, 3196.97 feet distant;

Thence from the beginning point, N88°39'E, 817.73 feet to the Northeast corner;

Thence S1°34'48"E, 2598.89 feet to the Southeast corner;

Thence S87°55'25"W, 817.75 feet to the Southwest corner;

Thence N1°34'48"W, 2609.26 feet to the place of beginning, containing 43.884 acres more or less.

SUBJECT TO a County Road easement along the South side.

SUBJECT TO any reservations, restrictions, conditions and easements of record.

* This Deed is to correct that certain Deed dated May 11, 1991, filed of record June 10, 1991, at Book 3 of Comp., Page 2872, which original Deed incorrectly limited the conveyance to an undivided one-third (1/3) interest.

WITNESS my hand and seal this 22nd day of August, 1993

(Seal) (Seal)

Mary Ann Livingston
MARY ANN LIVINGSTON (Seal)

ACKNOWLEDGMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO
COUNTY OF BERNALILLO ss.

The foregoing instrument was acknowledged before me this 22nd day of August, 1993 by MARY ANN LIVINGSTON

(Name or Names of Person or Persons Acknowledging)

My commission expires: (Seal) Notary Public

ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO
COUNTY OF } ss.

The foregoing instrument was acknowledged before me this day of 19

by (Name of Officer)

FOR RECORDER'S USE ONLY
#2561023
STATE OF NEW MEXICO
COUNTY OF MCKINLEY
Filed for record in the Clerk's office

HC #2
3200

File Number: G-01876

NEW MEXICO OFFICE OF THE STATE ENGINEER
DECLARATION OF OWNER OF UNDERGROUND WATER RIGHT

1. DECLARANT

Name: Llano Family Ltd Partnership Work Phone: 243-6721
Contact: John C. Llano, General Partner Home Phone: 345-2846
Address: 70116 Martindale Drive Gallup 863-3098
City: Gallup State: NM Zip: 87601

2. LOCATION OF WELL (A, B, C, or D required, E or F if know)

A. SE 1/4 SW 1/4 SW 1/4 Section: 19 Township: 12N Range: 18W N.M.P.M.
in McKintley County.

B. X = _____ feet, Y = _____ feet, N.M. Coordinate System
Zone in the _____ Grant.
U.S.G.S. Quad Map _____

C. Latitude: _____ d _____ m _____ s Longitude: _____ d _____ m _____ s

D. East _____ (m), North _____ (m), UTM Zone 13, NAD _____ (27): 89

E. Tract No. _____, Map No. _____ of the _____ Hydrographic Survey

F. Lot No. _____, Block No. _____ of Unit/Tract _____
Subdivision recorded in _____ County.

G. Other: _____

H. On land owned by (required): H. Helen Mesick Moreno (1/3 undivided interest),
Llano Family Partnership (1/3 undivided interest), Edward B Mesick Estate
(1/3 undivided interest)

3. DESCRIPTION OF WELL

Date drilled: 1933 Driller: See attached letter from John Mesick

Depth: 200 feet. Outside diameter of casing 6 inches;

Original capacity _____ gal. per min.; Present capacity 20 gal. per min.;

Pumping lift: _____ feet; Static water level: _____ feet (above) (below) land

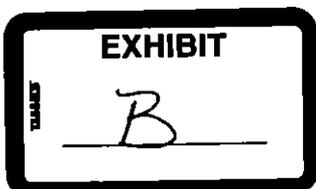
surface; Make of pump: _____; Type of pump: _____

Make, type, horsepower, etc., of power plant: _____

Fractional or percentage interest claimed in well: 33%

File Number: G-01876
Form: wf-03

Trn Number: 297001



03 OCT 28 PM 3:18
STATE ENGINEER OFFICE
ALBUQUERQUE, NEW MEXICO

NEW MEXICO OFFICE OF THE STATE ENGINEER
DECLARATION OF OWNER OF UNDERGROUND WATER RIGHT

4. QUANTITY

Consumptive Use: 20.0 acre-feet per annum
Diversion Amount: 20.0 acre-feet per annum

20.0 Dan Costley

5. PURPOSE OF USE

Domestic: Livestock: Irrigation: Municipal: Industrial:
Commercial: Other (specify): _____
Specific use: _____

6. PLACE OF USE

8.425 acres of land described as follows:

Subdivision of Section (District or Hydrographic Survey)	Section (Map No.)	Township (Tract No.)	Range	Acres
<u>See Deed</u>				

*Doc
10/30/03*

Who is the owner of the land: Livingston Family Partnership (1/3 undivided interest)
H. Wilson (1/3 undivided interest), H. Wilson (1/2 undivided interest), H. Wilson (1/3 undivided interest)

7. WATER WAS FIRST APPLIED TO BENEFICIAL USE ON: 1933 (date)
and since that time has been used fully and continuously for all of the above described purposes except as follows: N/A

8. ADDITIONAL STATEMENTS OR EXPLANATIONS:

This underground water right declaration is not intended to limit or waive any surface, above ground, or other water rights remaining with the land to which Declarant claims an interest to.

*10/30/03
Doc
2 Houses, House, Cattle*

**NEW MEXICO OFFICE OF THE STATE ENGINEER
DECLARATION OF OWNER OF UNDERGROUND WATER RIGHT**

ACKNOWLEDGEMENT FOR NATURAL PERSONS

(I, We) Dawn Cooksey affirm that the
(Please Print)
foregoing statements are true to the best of my knowledge and belief.

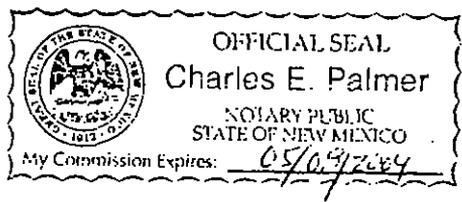
Dawn Cooksey N/A
Declarant Signature Declarant Signature

NOTARY

This instrument was acknowledged before me this 28th day of October

A.D., 2003. By Dawn Cooksey
Name of Applicant

My commission expires 05/08/2004 Charles E. Palmer
Notary Public



ACCEPTANCE OF STATE ENGINEER

This Declaration form is hereby accepted for filing in accordance with NMSA-1978 (1985), as amended. The acceptance by the State Engineer Office does not constitute validation of the right claimed.

File Number: G-01876

NEW MEXICO OFFICE OF THE STATE ENGINEER
DECLARATION OF OWNER OF UNDERGROUND WATER RIGHT

4. QUANTITY

Consumptive Use: 30.75 ^{20.8} acre-feet per annum
Diversion Amount: 30.75 ^{20.8} acre-feet per annum

20.8 Paul Coakley

5. PURPOSE OF USE

Domestic: Livestock: Irrigation: Municipal: Industrial:
Commercial: Other (specify): _____
Specific use: _____

6. PLACE OF USE

8.425 acres of land described as follows:

Subdivision of Section (District or Hydrographic Survey)	Section (Map No.)	Township (Tract No.)	Range	Acres
<u>see deed</u>	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

*Doc
10/30/03*

Who is the owner of the land? Livingston Family Partnership (1/3 undivided interest)
A. Wilson, Michael Wilson (1/2 undivided interest), Edward A. Wilson (1/3 undivided)
7. WATER WAS FIRST APPLIED TO BENEFICIAL USE ON: 1933 (date)
and since that time has been used fully and continuously for all of the above described purposes except as follows: N/A

8. ADDITIONAL STATEMENTS OR EXPLANATIONS:

This underground water right declaration is not intended to limit or waive any surface, above ground, or other water rights remaining with the land to which declarant claims an interest to.

*10/30/03
Doc*

2 houses; horses + cattle; gardens + fruit trees

File Number:

G-01876

Form: wr-03

page 2 of 3

Tract Number:

28700131

03 OCT 31 AM 8:40

STATE ENGINEER OFFICE
ALBUQUERQUE, NEW MEXICO

AUG 27 2011

McKINLEY

7 1390

CORRECTION *
QUITCLAIM DEED

MARY ANN LIVINGSTON, a widow, dealing with her sole and separate property for consideration paid, quitclaim to LIVINGSTON FAMILY LIMITED PARTNERSHIP, a New Mexico Limited Partnership

whose address is 1116 Martinelli Gallup, New Mexico 87301

the following described real estate in McKinley County, New Mexico:

An undivided one-third (1/3) interest in:

A certain tract of land in the Whitewater, McKinley County, New Mexico, area comprising a portion of the South one-half of Section 19, Township 12 North, Range 18 West, New Mexico Principal Meridian, more particularly described as follows:

BEGINNING at the Northwest corner of the herein described tract, a point from which the West Quarter corner of said Section 19, as re-established by Clarence C. Goddard, New Mexico Registered Professional Engineer and Land Surveyor No. 1086, bears N47°12'27"W, 2409.90 feet distant;

Thence from the beginning point, S61°45'E, 370.0 feet to the Northeast corner;

Thence S28°15'W, 883.50 feet to the Southeast corner;

Thence S87°55'25"W, 428.66 feet to the Southwest corner;

Thence N28°15'E, 1100.0 feet to the place of beginning, containing 8.425 acres more or less.

SUBJECT TO a County Road easement along the South side.

SUBJECT TO any reservations, restrictions, conditions and easements of record.

* This Deed is to correct that certain Deed dated May 11, 1991, filed of record June 10, 1991, at Book 3 of Comp., Page 2871, which original Deed should have limited the conveyance to an undivided one-third (1/3) interest.

WITNESS my hand and seal this 27th day of August, 1993

(Seal) (Seal)

Mary Ann Livingston (Seal) MARY ANN LIVINGSTON (Seal)

ACKNOWLEDGMENT FOR NATURAL PERSONS

STATE OF NEW MEXICO
COUNTY OF BERNALILLO ss.

The foregoing instrument was acknowledged before me this 27th day of August, 1993 by MARY ANN LIVINGSTON (Name or Names of Person or Persons Acknowledging)

My commission expires: (Seal) Notary Public

ACKNOWLEDGMENT FOR CORPORATION

STATE OF NEW MEXICO
COUNTY OF ss.

The foregoing instrument was acknowledged before me this day of 19 by (Name of Officer)

FOR RECORDER'S USE ONLY
#256002
STATE OF NEW MEXICO
COUNTY OF MCKINLEY
Filed for record in the Clerk's office
27th day of August