

**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

CIV No. 01 0072 BB/WWD-ACE

**ZUNI INDIAN TRIBE AND
NAVAJO NATION,**

ZUNI RIVER STREAM SYSTEM

Plaintiffs-in-Intervention

v.

A & R Productions, *et al.*,

Defendants.

NAVAJO NATION'S RESPONSE
TO THE WESTERN NEW MEXICO WATER PRESERVATION ASSOCIATION'S MOTION
TO CERTIFY QUESTIONS TO THE NEW MEXICO SUPREME COURT

The Navajo Nation submits this response to Western New Mexico Water Preservation Association's (WPA) Motion to Certify Questions to the New Mexico Supreme Court (No. 396). This court should deny WPA's motion because WPA fails to set out questions which may be certified to the New Mexico Supreme Court under New Mexico Rules of Appellate Procedure 12-607 (1987).

A question may be certified to the New Mexico Supreme Court if the answer to the question "may be determinative of an issue in pending litigation" and the question cannot be answered by "a controlling (1) appellate opinion of the New Mexico Supreme Court or the New

Mexico Court of Appeals; or (2) constitutional provision or statute of [the State of New Mexico].” NMRAP 12-607. The State and the United States articulately set out in their briefs how WPA failed to meet the standard for certifying questions to the New Mexico Supreme Court. The Navajo Nation concurs in the reasons as set forth by the State and the United States.

For the reasons set forth by the State of New Mexico and the United States, the Court should deny WPA’s Motion for Certification of Questions to the New Mexico Supreme Court.

Respectfully submitted this 30th day of November, 2005,
NAVAJO NATION DEPARTMENT OF JUSTICE
Louis Denetsosie, Attorney General

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the forgoing pleading **NAVAJO NATION’S RESPONSE TO THE WESTERN NEW MEXICO WATER PRESERVATION ASSOCIATION’S MOTION TO CERTIFY QUESTIONS TO THE NEW MEXICO SUPREME COURT** was mailed first class to the parties of record on the attached Service List this 30th day of November, 2005.

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