

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

UNITED STATES OF AMERICA,)	
and)	
STATE OF NEW MEXICO, <i>ex rel.</i> STATE)	
ENGINEER,)	
)	
Plaintiffs,)	
)	No. 01cv00072 BB-ACE
and)	
)	ZUNI RIVER BASIN
ZUNI INDIAN TRIBE, NAVAJO NATION,)	ADJUDICATION
)	
Plaintiffs in Intervention,)	Sub-areas 4 & 8
)	
v.)	Subfile ZRB-1-0087
)	
A&R PRODUCTIONS, et al.)	
)	
Defendants.)	
_____)	

MOTION FOR SUBSTITUTION OF PARTY

The Plaintiffs United States of America (“United States”) and State of New Mexico *ex rel.* State Engineer (“State”) hereby move the Court pursuant to Fed. R. Civ. P. 25(a) to issue its order substituting the ESTATE OF CATHERINE REINSCHMIDT for defendant CATHERINE REINSCHMIDT in these proceedings and dismissing this action as to Catherine Reinschmidt. As grounds for this motion, Plaintiffs state as follows:

1. The United States’ original Complaint and the August 2003 Amended Complaint name Catherine Reinschmidt as a party defendant. However, Plaintiffs are informed that Catherine Reinschmidt is now deceased.

2. By an *Entry of Appearance* dated December 22, 2005 [Doc. No. 448], the firm of Montgomery & Andrews, P.A., appeared on behalf of the Estate of Catherine

Reinschmidt. However, no formal suggestion of death has been made on the record. See Grandbouche v. Lovell, 913 F.2d 835, 836 (10th Cir. 1990) (“The running of the ninety-day limitations period under Rule 25(a)(1) is not triggered unless a formal suggestion of death is made on the record, regardless of whether the parties have knowledge of a party’s death.”).

3. Brian Egolf, counsel of record for the Estate of Catherine Reinschmidt has been contacted concerning the terms of this motion and concurs in it.

WHEREFORE, the Plaintiffs respectfully move the Court to enter its order substituting the ESTATE OF CATHERINE REINSCHMIDT for defendant CATHERINE REINSCHMIDT in these proceedings.

DATED: May 23, 2006

Respectfully submitted,



BRADLEY S. BRIDGEWATER

U.S. Department of Justice
1961 Stout Street – 8th Floor
Denver, CO 80294
(303) 844-1359

COUNSEL FOR THE UNITED STATES

(approved via telephone 5/23/2006)

EDWARD BAGLEY
Office of the State Engineer, Legal Division
P.O. Box 25102
Santa Fe, NM 87504
(505) 827-6150

COUNSEL FOR THE STATE OF NEW MEXICO
EX REL. STATE ENGINEER

CERTIFICATE OF SERVICE

I hereby certify that, on May 23, 2006, a copy of the forgoing *Motion For*

Substitution Of Party was mailed to the following persons:

Via Regular Mail:

Special Master Vickie L. Gabin
U.S. District Court
District of New Mexico
P.O. Box 2384
Santa Fe, NM 87504-2384

Edward Bagley
Office of the State Engineer, Legal Division
P.O. Box 25102
Santa Fe, NM 87504

Via Certified Mail With Request for Waiver of Service:

Brian Egolf
Montgomery & Andrews, P.A.
P. O. Box 2307
Santa Fe, NM 87504-2307
(Counsel of record for the Estate of Catherine Reinschmidt)


