

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-area 7
)	
v.)	Subfile ZRB-3-0099
)	
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(c) to issue its order (1) substituting PATRICK A. MAHER for defendant BETTY J. MAHER in these proceedings, (2) deeming the filed Waiver of Service of Summons bearing the typewritten name of Betty J. Maher crossed out and replaced by the hand-printed name of Patrick A. Maher and signed by Patrick A. Maher to be a valid waiver of service by the defendant Patrick A. Maher, and (3) permitting the United States to submit for Court approval a Consent Order originally issued to Betty J. Maher, but having that name crossed out and replaced by the hand-printed name of Patrick A. Maher, and bearing the signature of Patrick A. Maher. As grounds for this motion, Plaintiffs state as follows:

1. Pursuant to the Special Master's March 7, 2006 *Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Area 7 of the Zuni River System* (Doc. No. 561) and based upon information obtained from Cibola County records for the Hydrographic Survey of Sub-area 7, the United States, on March 31, 2006, filed a *Motion To Join Additional Parties Defendant* (Doc. No. 615), requesting the Court to join Betty J. Maher, among others, as a party defendant in this case. The Court granted the motion on April 5, 2006. (Doc. No. 616).

2. Also pursuant to the Special Master's procedural and scheduling order, the United States served a proposed Consent Order for Subfile ZRB-3-0099, signed by counsel for the United States and the State, upon Betty J. Maher. The service packet, mailed on May 12, 2006, included waiver of service of summons documents for Betty J. Maher, who had not previously waived service.

3. Patrick A. Maher is the son of Betty J. Maher. He signed the Waiver of Service of Summons originally bearing the typewritten name of Betty J. Maher on May 24, 2006, substituting his own hand-printed name for the typewritten name of his mother. He also indicated on the waiver form that Betty J. Maher was deceased and that he, Patrick A. Maher is her heir. The waiver is being submitted to the Clerk for filing contemporaneously with this motion.

4. On June 12, 2006, the Consent Order proposed by the United States and the State for Subfile ZRB-3-0099 was returned to the United States together with the Request for Consultation form for the subfile. On the Consent Order, Mr. Maher again struck out and substituted his own hand-printed name for each typewritten instance of his mother's name and

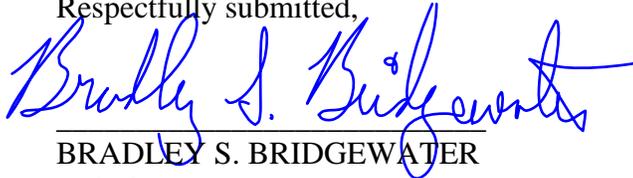
signed the document in his own name. On the Request for Consultation, Mr. Maher indicated that his mother was deceased and that he was the sole heir to the property involved in Subfile ZRB-3-0099. Attached to the Request for Consultation were copies of documents, including a Quitclaim Deed by which Mr. Maher's sister, Deborah J. Blanchard, quitclaimed the property involved in this subfile to Mr. Maher, and a Default Judgment entered July 7, 2004 in Patrick A. Maher v. Unknown Heirs of Betty Jean Maher, No. D1333-PB-20040011 (13th Jud. Dist., Cibola County, N.M.).¹ The Default Judgment, *inter alia*, quieted Mr. Maher's title to the subject property.

WHEREFORE, the Plaintiffs respectfully move the Court to enter its order (1) substituting PATRICK A. MAHER for defendant BETTY J. MAHER in these proceedings, (2) finding the filed Waiver of Service of Summons bearing the typewritten name of Betty J. Maher crossed out and replaced by the hand-printed name of Patrick A. Maher and signed by Patrick A. Maher to be a valid waiver of service by the defendant Patrick A. Maher, and (3) permitting the United States to submit for Court approval a Consent Order originally issued to Betty J. Maher, but having that name crossed out and replaced by the hand-printed name of Patrick A. Maher and bearing the signature of Patrick A. Maher.

DATED: June 22, 2006

¹ A copy of the Default Judgment is also attached to this motion.

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 email 6/22/2006)

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 June 22, 2006, a copy of the forgoing *Motion For*

Substitution Of Party was mailed to the following persons:

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

Patrick A. Maher
1427 Forest Ridge Drive
Stanley, NC 28164

A handwritten signature in blue ink, reading "Brady L. Budgevick", is written over a horizontal line.

THIRTEENTH JUDICIAL DISTRICT COURT
COUNTY OF CIBOLA
STATE OF NEW MEXICO

PATRICK A. MAHER,
Petitioner,

v.

The Unknown Heirs of BETTY JEAN MAHER,
Deceased, and all unknown claimants in
the premises adverse to the Petitioner,
Respondents.

2004 JUL -7 AM 8:51

BY: [Signature]
DEPUTY
CIBOLA COUNTY
No: D1333-PB-20040011



DEFAULT JUDGMENT

THIS MATTER having come on to be heard upon the Petitioner's Motion for Default Judgment, named and unnamed, and it appearing that the Respondents have been properly served with process, more than 30 days having elapsed since the date of completion of service by publication on all Respondents, and none of the Respondents having entered an appearance or otherwise filed a responsive pleading to the Complaint within the time prescribed by law, and it appearing from the Certificate as to the State of the Record that such Respondents are now in default with respect to the Complaint; and it further appearing that there is no just cause for delay in entering judgment in favor of the Petitioner and against the Respondents, named and unnamed, in accordance with the Petitioner's Complaint, accordingly, the Court **FINDS:**

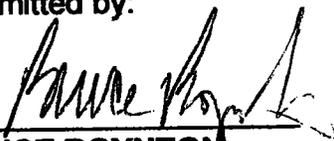
1. The Court has jurisdiction over the parties and the subject matter of this action and the Petitioner is entitled to Judgment on the Pleadings of by Default against the Respondents, in accordance with its Complaint and the Certificate as to the State of the Record herein.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Petitioner be,

and hereby are awarded Judgment for relief requested in the Complaint against the Respondents herein, that the claims of the Petitioner to the subject property are superior to the claims of any Defendant or any unknown person claiming any interest adverse to that of the Petitioner, that the Respondents are barred and forever estopped from having or claiming any lien upon or right or title to the premises adverse to the Petitioner, and that the Petitioner's title to the property best described in Exhibit A as attached hereto is forever quieted and set at rest.


DISTRICT COURT JUDGE

Submitted by:


BRUCE BOYNTON
Attorney for Petitioner

REC DATE 08/03/05 REC TIME 01:07 PM BOOK 0014 PAGE 4442
CIBOLA COUNTY NM EILEEN MARTINEZ-COUNTY CLERK DOC # 200504375

EXHIBIT A

The southern portion of Lots ten (10), eleven (11) and twelve (12) of Brandys Best, a subdivision in Cibola County, New Mexico, as filed in the office of the County Clerk of Valencia County, New Mexico, August 21, 1979, and being more particularly described as follows:

Beginning at the southwest corner, which is the southwest corner of said Lot 12, and running Thence N 04° 56' 39" W 615.00 feet to the northwest corner of this tract;

Thence N 71° 24' 42" E 1211.84 feet along a fence to the northeast corner of this tract;

Thence S 00° 16' 00" W 1130.69 feet along the east boundary of said Lot 10 to the southeast corner of this tract which is the southeast corner of said Lot 10;

Thence along the southerly boundaries of said Lots 10, 11 and 12 as follows:

N 81° 14' 36" W 500.00 feet to a point;

Thence S 08° 45' 24" W 20.00 feet to a point;

Thence N 82° 45' 45" W 597.90 feet to the place of beginning containing 22.404 acres, more or less.

REC DATE: 03/03/05 REC TIME: 01:07 PM BOOK: 0214 PAGE: 4443
CIBOLA COUNTY, NM EILEEN MARTINEZ-COUNTY CLERK DOC # 230504375

I, Eileen Martinez, County Clerk of the District Court of Cibola County, New Mexico, hereby certify that the foregoing is true, correct, and full copy of the instrument herewith set out as appears of record in my office.

Dated this 3 day of March 2005

