

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,)	
)	
v.)	
)	
A&R PRODUCTIONS, et al.)	
)	
Defendants.)	
_____)	

MOTION TO JOIN ADDITIONAL PARTY DEFENDANT

The United States of America (“United States”) hereby respectfully requests the Court to join as an additional party defendant the trust named below and order the party to answer the United States’ Complaint in this action as required in any civil action in the United States District Court or suffer default judgment against the party. In support of this motion, the United States asserts:

1. The trust listed below is diverting and using or may claim a right to divert and use surface or underground waters within the Zuni River stream system in New Mexico:

Subfile No.	Defendant
ZRB-4-0382	ROGER J. THOMAS & V. ELAINE THOMAS REVOCABLE TRUST DATED OCTOBER 4, 2006 P.O. BOX 446 ZUNI, NM 87327

The water uses, or claims to the right to use water, of this entity are subject to the laws of the State of New Mexico and the United States. This Court has exclusive jurisdiction to adjudicate all claims to the right to divert, store, or use public waters of the Zuni River stream system in New Mexico.

2. The entity listed above may be diverting and using water associated with the subfile number listed, or may otherwise be using or diverting surface or underground waters within the Zuni River stream system.

3. V. Elaine Thomas was identified by the Hydrographic Survey for Sub-areas 1, 2, and 3 (excluding Ramah) of the Zuni River stream system as the owner of the property involved in Subfile ZRB-4-0382, for which the hydrographic survey has identified existing water uses, and Ms. Thomas has been joined as a defendant by the Court's October 31, 2006 *Order Granting Motion To Join Additional Parties Defendant*. However, before serving the packet required by the Special Master's September 28, 2006 *Procedural and Scheduling Order for the Adjudication of Water Rights Claims in Sub-Areas 1, 2, and 3 (Excluding Ramah) of the Zuni River Stream System*, the United States obtained from county records a copy of a recorded Warranty Deed by which V. Elaine Thomas granted the property in question to the trustees of the Roger J. Thomas & V. Elaine Thomas Revocable Trust Dated October 4, 2006 ("Revocable Trust"). Accordingly, the United States has not served V. Elaine Thomas and has,

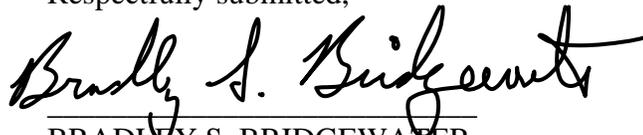
instead, revised the service packet for Subfile ZRB-4-0382 to reflect the current ownership information.

4. This motion is not presented as a motion to substitute because Ms. Thomas has not yet been sent any service documents and because the initial mailing to the Revocable Trust will include all of the service items required by the Special Master's Procedural and Scheduling Order. Service of a motion to substitute pursuant to Fed.R.Civ.P. 25 in such circumstances could cause needless confusion for Ms. Thomas.

5. For the benefit of other parties, and by way of explanation, the United States asserts that motions to add additional defendants, dismiss defendants, correct defendants' names, and take other corrective action, are parts of an on-going process made necessary by the hydrographic survey, defendants' responses, and other kinds of new information received during the course of this adjudication. The United States advances such motions primarily for the purpose of ensuring that the Court's records indicate as accurately as possible the persons or entities that are parties to this case.

DATED: December 7, 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

CERTIFICATE OF SERVICE

I hereby certify that, on December 7, 2006, a copy of the foregoing *Motion To Join Additional Party Defendant* was mailed to the following persons.



Bradley J. Bairants

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