

Answer to the United States' Subproceeding Complaint

1. Defendants are without sufficient information to form a belief as to the truth of the matters stated in Paragraphs 1, 2, and 3 of the Zuni Subproceeding Complaint and therefore deny the same.

2. Paragraphs 4 and 5 of the Zuni Subproceeding Complaint state legal conclusions to which no answer is required. To the extent that the allegations can be construed as requiring an answer, the Defendants deny the same.

3. Defendants are without sufficient information to form a belief as to the truth of the matters stated in Paragraphs 6 of the Zuni Subproceeding Complaint and therefore deny the same.

4. Paragraph 7 of the Zuni Subproceeding Complaint states legal conclusions to which no answer is required. To the extent that the allegations can be construed as requiring an answer, the Defendants deny the same.

5. Paragraph 8 of the Zuni Subproceeding Complaint states legal conclusions to which no answer is required. To the extent that the allegation can be construed as requiring an answer, the Defendants deny the same. Defendants specifically deny that every water right claimed in the Zuni Subproceeding Complaint has a priority date that is time immemorial or aboriginal.

6. Paragraphs 9 and 10 of the Zuni Subproceeding Complaint state legal conclusions or make general statements regarding the Tribe's intent to preserve its member's confidential religious practices. These statements do not appear to require an answer. However, to the extent that the statements can be construed as requiring an answer, the Defendants deny the same.

7. Paragraphs 11 through 13 appear to be for informational purposes only and require no answer. However, to the extent that the statements can be construed as requiring an answer, the Defendants deny the same.

8. Defendants deny the allegations stated in paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, and 31.

9. If there are allegations to which Defendants have failed to specifically respond through inadvertence, those allegations are denied.

**Answer To Zuni Indian Tribe's
Supplemental Subproceeding Complaint**

As their Answer to the Zuni Indian Tribe's Supplemental Subproceeding Complaint ("Zuni Subproceeding Complaint"), Defendants state as follows:

1. In response to paragraphs 1 and 6 of the Zuni Subproceeding Complaint, Defendants adopt and incorporate herein by reference all responses to the United States' Subproceeding Complaint and Statement of Claims for Water Rights on Behalf of, and for the benefit of, the Zuni Indian Tribe and Zuni Allottees ("Subproceeding Complaint").

2. Defendants are without sufficient knowledge to form a belief as to the truth of the allegations of paragraph 2 regarding additional water rights and therefore deny the same. Defendants deny that the Zuni Tribe has a priority date of time immemorial or aboriginal with regard to the water rights claimed in the Zuni Subproceeding Complaint.

3. In response to paragraphs 3 through 9, Defendants state that they are without sufficient information to form a belief as to the truth of the allegations regarding claimed amounts of water used by the Zuni Tribe and therefore deny the same. All other allegations of paragraphs 3 through 9 of the Zuni Subproceeding Complaint are denied.

10. If there are allegations to which Defendants have failed to specifically respond through inadvertence, those allegations are denied.

AFFIRMATIVE DEFENSES TO UNITED STATES' SUBPROCEEDING COMPLAINT AND ZUNI INDIAN TRIBE'S SUPPLEMENTAL SUBPROCEEDING COMPLAINT

As separate and distinct affirmative defenses to the United States' Subproceeding Complaint and the Zuni Indian Tribe's Supplemental Subproceeding Complaint, Defendants state as follows:

FIRST AFFIRMATIVE DEFENSE

The Subproceeding Complaint must be dismissed for lack of jurisdiction and the Court's obligation to abstain until the proper action is brought in state court.

SECOND AFFIRMATIVE DEFENSE

The Subproceeding Complaint fails to state a claim upon which relief can be granted.

THIRD AFFIRMATIVE DEFENSE

The Zuni Pueblo and its water rights are constrained by the pueblo Indian water rights doctrine and are measured by historical beneficial use and demand as well as the obligation to balance its uses against the needs of others within the Basin.

FOURTH AFFIRMATIVE DEFENSE

Any lands created by executive order are restricted to those demonstrably proven to be capable of economic productive agricultural use within the meaning of federal principles and guidelines for measuring cost-benefit ratios.

FIFTH AFFIRMATIVE DEFENSE

The water rights of individual Zuni allottees are limited to actual beneficial use.

SIXTH AFFIRMATIVE DEFENSE

The Subproceeding Complaint must be dismissed because the United States' action fails to join indispensable parties within the State of Arizona who are directly affected by the allegations and the outcome of this action. And, it is not an adjudication of a complete stream system as contemplated by the New Mexico adjudication statute.

SEVENTH AFFIRMATIVE DEFENSE

The Complaint must be dismissed because the United States' action fails to join the State of Arizona whose rights are affected by what will become a *pro tanto* equitable apportionment of an interstate stream system, modifying existing interstate entitlements to water.

EIGHTH AFFIRMATIVE DEFENSE

The primary purpose of use of water pursuant to executive order, treaty, and/or federal legislation was solely for agricultural purposes. All other water uses are secondary and must be acquired pursuant to applicable state law. *See United States v. New Mexico*, 438 U.S. 696 (1978).

NINTH AFFIRMATIVE DEFENSE

Neither under Spanish nor Mexican law or under federal executive order, treaty, or federal legislation was it contemplated or intended that on-reservation water use could be the basis for an injunction against off-reservation water use for domestic and other related purposes.

TENTH AFFIRMATIVE DEFENSE

Any claims by the Zuni Indian Tribe to ground water of the Zuni River Basin are limited by the same legal constraints applicable to the Zuni Indian Tribe's claims to surface waters of the Zuni River Basin.

ELEVENTH AFFIRMATIVE DEFENSE

Pursuant to Local Rule 7.1(a) of the Federal District Court of New Mexico, Defendants herein adopt and incorporate herein all Affirmative Defenses raised by the State of New Mexico in its Answer to United States' Subproceeding Complaint on Behalf of the Zuni Indian Tribe and its Allottees (Document 166, filed 01/30/2008) and its Answer to the Zuni Indian Tribe's Supplemental Subproceeding Complaint (Document 177, filed 01/31/2008).

WHEREFORE, Defendants respectfully request that the Court dismiss the United States' Subproceeding Complaint and the Zuni Indian Tribe's Supplemental Subproceeding Complaint with prejudice, award Defendants attorney fees and costs as provided by law, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

LAW & RESOURCE PLANNING ASSOCIATES,
A Professional Corporation

By: _____

Charles T. DuMars
Tanya L. Scott
Albuquerque Plaza, 201 3rd Street NW, Ste. 1370
Albuquerque, NM 87102
(505) 346-0998 / FAX: (505) 346-0997